TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No. 568.

THE TEXAS AND PACIFIC RAILWAY COMPANY ET AL., APPELLANTS,

vs.

THE UNITED STATES, THE INTERSTATE COMMERCE COMMISSION, ET AL.

APPEAL FROM THE UNITED STATES COMMERCE COURT.

FILED MAY 22, 1913.

(23,713)

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INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., SEPTEMBER 29, 1913.

a United States Commerce Court.

No. 68.

THE TEXAS & PACIFIC RAILWAY COMPANY, Petitioner,

vs.

UNITED STATES OF AMERICA, Respondent; Interstate Commerce Commission, Railroad Commission of Louisiana, Missouri, Kansas & Texas Railway Company of Texas, St. Louis Southwestern Railway Company, and St. Louis Southwestern Railway Company of Texas, Interveners.

UNITED STATES OF AMERICA, *ss*:

Be it remembered that in the United States Commerce Court, in the City of Washington, District of Columbia, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above entitled cause, to wit:

1 PETITION AND EXHIBITS.

Filed May 10, 1912.

In the United States Commerce Court.

No. 68. In Equity.

THE TEXAS & PACIFIC RAILWAY COMPANY, Petitioner,

vs.

UNITED STATES OF AMERICA, Respondent.

Petition.

To the Honorable the Judges of the United States Commerce Court:

The Texas & Pacific Railway Company, a corporation duly and legally incorporated under the laws of the United States, files this its petition against the United States of America and thereupon complains and says:

I.

That petitioner is a carrier by rail engaged in the carriage of domestic commerce within the State of Texas and domestic commerce within the State of Louisiana respectively and of interstate commerce between the States of Texas and Louisiana and be-
2 tween the States of Texas and Louisiana and other states and territories of the United States and foreign countries and has been such carrier engaged in the carriage of such commerce

during the time of all the happenings hereinafter referred to and for many years prior thereto; that the tariffs, rates, charges, classifications, regulations and practices observed and enforced by your petitioner in the conduct of interstate and foreign commerce during the time it has been conducting such business have been legally established, filed and observed; that the said tariffs, rates, charges, classifications, regulations and practices were, as your petitioner is informed and charges, just, fair and reasonable as to all parties, places, commodities and states interested therein.

II.

That heretofore, to-wit, on or about the 8th day of March, 1911, J. J. Meredith, Shelby Taylor and Henry B. Schreiber, constituting the Railroad Commission of Louisiana, filed their petition before the Interstate Commerce Commission against your petitioner and other carriers engaged in interstate commerce, among others the St. Louis Southwestern Railway Company of Texas, the Missouri, Kansas & Texas Railway Company of Texas, the Texas & Pacific Railway Company and others, said cause being No. 3918 on the docket of said Commission, wherein they complained of your petitioner and numerous railway companies, the names of which are set forth in said petition, which is herewith referred to and prayed to be taken as a part of this petition as fully as if set out at length herein
3 and which will be filed in this cause, of an alleged discrimination in rates on various commodities and articles of commerce in said petition mentioned and set forth, as between Shreveport, Louisiana and distributing points in Texas to competitive points in the State of Texas, and for cause of discrimination alleged in said petition that the defendants named therein charged, collected and received from said distributing points in Texas to said competitive points, rates which are much less by any method of comparison than the rates exacted by defendants for the transportation of similar articles between Shreveport and the same destinations, thereby giving and creating an undue advantage in said competitive territory to the distributing points in Texas, and it being, among other things, alleged that "The said rates between said Shreveport and said competitive points are so unjust, unreasonable and unduly prejudicial and discriminatory as to deprive the various shippers and consignees doing business at Shreveport of the benefits which, under just, reasonable and non-discriminatory rates would be afforded to such shippers and consignees at said Shreveport, and in many instances are absolutely prohibitive of any commerce between said Shreveport and said points in Eastern Texas." That answers were filed to said petition by various defendants named therein, among others by your petitioner; that thereafter, by permission of the said Interstate Commerce Commission numerous pleas of intervention were filed both by shippers and commercial bodies in the State of Louisiana joining in the prayer of the complainants. That testimony was taken and arguments made in said cause, and the same was submitted to the Commission on January 16, 1912.

4

III.

That on March 11, 1912, the Interstate Commerce Commission handed down a report and order in said cause. The majority of said Commission held with and decided in favor of the complainants and the minority of the Commission dissented from such holding.

IV.

The opinion of the majority of said Interstate Commerce Commission begins by stating what had been shown to be the policy of the Texas Commission and after quoting numerous utterances of the Railroad Commission of Texas the opinion, among other things, states:

"There appears to be little question as to the policy of the Texas Commission. It is frankly one of protection to its own industries and communities. We find in the early reports of that Commission, which are quoted at length in the record, evidences that the Texas Commission believed that the interstate carriers operating from the north and east into Texas were pursuing a policy hostile to the development of that state. The Texas Commission was conscious that it was within the power of these interstate carriers to so adjust rates as to make Texas entirely or largely dependent upon other states and thus restrict the growth of her cities and fix the nature of her industries, the employments of her people, and the character of her civilization so far as these depend on economic and industrial conditions. With this thought in mind the Texas Commission sought to establish a Texas policy and to make the railroads within that state contribute in the manner believed by her own

5 people to best subserve their own interests."

That thereafter in said opinion the Interstate Commerce Commission stated the real nature of petitioner's complaint in said cause as follows:

The Problem Raised.

"The petition of the complainants is that this Commission 'establish the same basis of rates of transportation between Shreveport and east Texas points as are accorded by defendants to Texas competitors of Shreveport interests in the same line of business for the same distances.'"

The opinion then states that the Interstate Commerce Commission has no power or authority to prescribe rates for intrastate transportation within the State of Texas and propounds the following question:

"Passing then to the question of discrimination, has this Commission the power to say that whatever rates an interstate carrier makes between points in Texas shall not be exceeded for the same distance under like conditions between Shreveport and Texas points? In other words, may a carrier engaged in interstate commerce discriminate against a city beyond the border of a state by imposing upon that city's traffic rates which deny its shippers access upon equal terms to the communities of an adjoining state?"

The Interstate Commerce Commission thereupon announces the conclusion that it has the power to prevent such discrimination as follows:

6 "An interstate carrier must respect the federal law, and if it is also subjected to state law it must respect that in so far as it can without doing violence to its obligations under the national authority. Before us are carriers which undeniably discriminate directly against interstate traffic. To this charge they plead that all they have done was to obey the orders of a state commission, as against which they were helpless. They appealed to no court for relief, nor to this Commission. When the State of Louisiana after years of endurance makes complaint to this body these carriers make no showing of the reasonableness of their rates other than that heretofore dealt with—a traffic adjustment equalizing gateways—and even in this defense all the carriers do not join. The class rate of the Texas Commission within the distances here involved are not too low. This the carriers themselves do not urge. Yet they have maintained higher rates from Shreveport, the interstate point. While the Texas commission has evidenced a policy of home protection for its own state cities, there is every evidence that the carriers moving into and within Texas accepted this policy as their own, claiming that not to have adopted it would have led to reprisal on the part of the state authorities. Such conditions may not continue under this act. The interstate carrier which adopts a policy, even under state direction, that makes against the interstate movement of commerce must do so with its eyes open and fully conscious of its responsibilities to the federal law which guards commerce 'among the states' against discrimination.

It is suggested that the exercise of such power to end discrimination between rates within a state and rates to interstate points must surely lead to a conflict in which the jurisdiction of one sovereignty or the other must give way. To this suggestion the one and sufficient answer is that when conditions arise which in the fulfillment

7 of its obligation and the due exercise of its granted power to regulate commerce among the states make such course necessary the national government must assume its constitutional right to lead."

That thereupon the opinion announces the following conclusions:

"We find:

(1) That the present class rates out of Shreveport to points in Texas on the Texas & Pacific Railway included in the following table, and to points in Texas on the Houston, East & West Texas Railway, are unjust and unreasonable.

(2) That just and reasonable class rates on these lines of railroad should not exceed the following:

On the Texas & Pacific Railway.

From Shreveport, Lai, to—	Distance. Miles.	Class rates in cents per 100 pounds.									
		1	2	3	4	5	A	B	C	D	E
Waskom, Tex	22.7	18	16	14	12	10	11	9	7	6	5
Jonesville, Tex	26.0	19	17	15	13	11	12	10	8	7	6
Scottsville, Tex	34.1	22	20	18	16	14	15	13	10	8	7
Marshall, Tex	42.0	24	22	20	18	16	17	14	11	9	7
Hallsville, Tex	55.2	29	27	25	23	19	20	17	14	12	9
Longview, Tex	65.7	32	29	27	25	20	21	18	15	13	10
Willow Springs, Tex	69.1	34	31	29	27	21	22	19	16	13	10
Camps, Tex	72.6	35	32	30	28	22	23	20	17	14	11
Gladewater, Tex	78.2	37	34	32	30	23	24	21	18	14	11
Big Sandy, Tex	88.3	40	37	35	32	24	25	22	19	15	12
Hawkins, Tex	94.0	42	39	36	33	25	26	23	20	16	13
Crow, Tex	100.5	44	41	38	35	26	27	24	21	16	13
Mineola, Tex	111.5	48	45	41	39	28	29	26	23	17	14
Grand Saline, Tex	124.6	52	48	44	42	30	31	28	25	18	15
Edgewood, Tex	135.1	54	50	45	43	31	32	29	26	19	16
Wills Point, Tex	142.3	56	52	47	45	32	33	30	26	19	16
Elmo, Tex	151.4	58	54	49	47	33	34	31	27	19	16
Terrell, Tex	157.9	60	56	51	49	34	35	32	28	20	16
Lawrence, Tex	161.9	61	56	51	49	35	36	33	28	20	16
Forney, Tex	169.4	63	58	52	50	36	37	34	29	20	16
Mesquite, Tex	177.6	65	60	54	52	37	38	35	29	21	16
Orphans Home, Tex	182.3	66	61	55	53	37	38	35	30	21	16

8 On the Houston, East & West Texas Railway.

From Shreveport, La , to—	Distance. Miles	Class rates in cents per 100 pounds.									
		1	2	3	4	5	A	B	C	D	E
Joaquin, Tex	42.8	25	23	21	19	17	18	15	12	10	8
Teneha, Tex	54.3	29	27	25	23	19	20	17	14	12	9
Timpson, Tex	63.9	32	29	27	25	20	21	18	15	13	10
Garrison, Tex	72.3	35	32	30	28	22	23	20	17	14	11
Appleby, Tex	83.3	38	35	33	30	23	24	21	18	14	11
Nacogdoches, Tex	92.4	41	38	35	32	25	26	23	20	16	13
Angelina, Tex	104.3	45	42	39	36	27	28	25	22	17	14
Lufkin, Tex	112.5	48	45	41	39	28	29	26	23	17	14
Renova, Tex	127.6	52	48	44	42	30	31	28	25	18	15
Corrigan, Tex	137.7	55	51	46	44	32	33	30	26	19	16
Moscow, Tex	143.2	56	52	47	45	32	33	30	26	19	16
Valda, Tex	147.0	57	53	48	46	33	34	31	27	19	16
Leggett, Tex	151.0	58	54	49	47	33	34	31	27	19	16
Livingston, Tex	159.2	60	56	51	49	34	35	32	28	20	16
Goodrich, Tex	167.3	62	57	51	49	35	36	33	28	20	16
Shepherd, Tex	175.4	64	59	53	51	36	37	34	29	21	16
Cleveland, Tex	187.5	67	62	56	54	38	39	36	30	21	16
Midline, Tex	194.2	69	64	58	56	39	40	37	31	22	17
New Caney, Tex	203.4	71	65	58	56	40	41	37	31	22	17
Pauli, Tex	208.8	72	66	59	57	40	41	38	32	22	17
Humble, Tex	213.6	73	67	59	57	41	42	38	32	22	17
Houston, Tex	230.7	77	70	60	58	43	44	39	33	23	17

(3) That such carriers maintain higher rates from Shreveport to points in Texas than are maintained from cities within Texas to such points under substantially similar conditions and circumstances.

(4) That thereby an unlawful and undue preference and advantage is given to such Texas cities, and a discrimination that is undue and unlawful is effected against Shreveport.

(5) That an order should be issued directing said carriers to establish and maintain rates no higher than those above found to be reasonable out of Shreveport to the Texas points named under western classification.

(6) That the Texas & Pacific Railway Company shall cease and desist from charging higher rates upon any commodity from Shreveport into Texas than are contemporaneously charged for the carriage of such commodity from Dallas toward Shreveport for an equal distance.

9 (7) That the Houston & Shreveport Railroad Company and the Houston, East & West Texas Railway Company shall cease and desist from charging higher rates upon any commodity from Shreveport into Texas than are contemporaneously charged for the carriage of such commodity from Houston toward Shreveport for an equal distance.

It will be the duty of the carriers under such order to duly and justly equalize the terms and conditions upon which they will extend transportation to traffic of a similar character moving into Texas from Shreveport with that moving wholly within Texas. But in effecting such equalization the class scale of rates prescribed above shall not be exceeded.

As to the matter of the concentration of Texas cotton at Shreveport specifically dealt with in the complaint we find the carriers pursuing a policy with respect to Texas cotton within Texas which they do not apply to Shreveport. This discrimination is likewise disapproved. Whatever is the practice pursued respecting the concentration of cotton within Texas the carrier shall be ordered to apply at Shreveport, provided the practice adopted shall be one justifiable under the act to regulate commerce and applicable fairly under like conditions elsewhere on the lines of the carriers."

In accordance with said opinion and conclusions an order was entered making effective the conclusions so announced, the same to become operative on or before the 1st day of May, 1912, and to remain in force for a period of not less than two years thereafter. Concurring opinions were filed, both of which reached the conclusion that the Interstate Commerce Commission had the power to prevent discrimination against interstate rates by state
10 rates which covered a part of the line of transit of the interstate route. The three dissenting opinions announced the proposition that the Interstate Commerce Commission had no authority under the Act to Regulate Commerce or otherwise, to control state rates, or to adopt intrastate rates made under state authority as measures of interstate rates without finding that the interstate rates complained of were unreasonable and that the intra-state rates were reasonable, and that the order based upon the opinions of the

majority exceeded the powers of the Interstate Commerce Commission under the law and was therefore null and void. A copy of the report and order of the Interstate Commerce Commission in said cause No. 3918 is hereto attached, marked Exhibit A and is prayed to be taken as a part hereof as fully as if set out at length herein. That thereafter on or about the 19th day of April, 1912, prior to the date when said order by its terms was to become effective, the Interstate Commerce Commission by its order, duly entered in that behalf, extended the effective date of said order to June 1, 1912. That said order by its terms is directed only against your petitioner and the Houston, East & West Texas Railway Company and the Houston & Shreveport Rai-road Company, but petitioner alleges that the Missouri, Kansas & Texas Railway Company of Texas extends from the City of Dallas, in said State of Texas, to the said City of Shreveport, and likewise the St. Louis Southwestern Railway Company of Texas, in connection with its affiliated line, the St. Louis Southwestern Railway Company, extends from said City of Dallas to said City of Shreveport and each of said companies extends to various commercial points of distribu-
11 tion in east Texas which are in competition with the City of Shreveport and also with the various cities and towns situated on the lines of your petitioner and also upon the lines of the Houston, East & West Texas Railway Company and the Houston & Shreveport Railroad Company and by reason of competitive conditions it is necessary for these lines, both of which were parties to said cause, to adopt whatever rates are in force upon the lines of your petitioner and the Houston, East & West Texas Railway Company and the Houston & Shreveport Railroad Company. That the line of your petitioner extends from the City of New Orleans to El Paso, Texas, a distance of 1,160 miles, and connects with various others railways in the States of Texas and Louisiana and over which by through routes and joint rates it transports large quantities of interstate commerce to and from the City of Shreveport and to and from various states and territories of the United States through said city. That the City of Shreveport has a population of about 30,000 inhabitants and is situated in the northwestern part of the State of Louisiana, about 42 miles from the Texas-Louisiana state line. That it does a large jobbing business and there is tributary thereto a large territory within the State of Texas. That the City of Dallas has a population of approximately 100,000 inhabitants, and is situated in the northern part of Texas, approximately 73 miles from the Oklahoma-Texas state line and 113 miles west of the City of Shreveport, and does a large jobbing and distributing business in the territory between Dallas and Shreveport, which territory may be described as competitive territory for the job-
12 bing interests of the two cities. That the City of Houston is situated in the southeastern part of the State of Texas, has a population of approximately 110,000 inhabitants and is distant from Shreveport approximately 231 miles. It is a large jobbing center and the territory in Texas lying between it and said City of Shreveport is competitive territory for the jobbing interests of the two cities. That the City of Dallas is connected with the City

of Shreveport by the line of your petitioner and also by that of the Missouri, Kansas & Texas Railway of Texas and by the St. Louis Southwestern Railway Company of Texas in connection with its affiliated line, the St. Louis Southwestern Railway. The City of Houston is connected with said City of Shreveport by the lines of the Houston, East & West Texas Railway Company and the Houston & Shreveport Railroad Company.

V.

That in said petition of the Railroad Commission of Louisiana hereinabove referred to the rates, both class and commodity, were complained of as being unreasonable in themselves and also as discriminatory against the City of Shreveport, in that for equal distances rates from Shreveport to the said competitive territory within the State of Texas were greater than the rates from the Texas cities and particularly said cities of Houston and Dallas, it being alleged in said petition that the rates from the Texas cities to said competitive territory had been established by the Texas Commission for the purpose of protecting Texas manufacturers and whole-
13 salers in said competitive territory against the manufacturers and wholesalers in the City of Shreveport and that the Texas Commission had so framed the rates from the Texas cities to this competitive territory as to preserve it for Texas manufacturers and jobbers and prevent the Shreveport manufacturers and jobbers from making sale of their goods and wares in this competitive territory. While the rates were alleged to be unjust and unreasonable in themselves the real contention of the Louisiana Commission in said cause was that the same effected an unjust and unlawful discrimination in favor of Texas manufacturers and jobbers as compared with the rates which were established by the Texas Commission to competitive points. That there was no substantial evidence introduced on the hearing of said cause to the effect that the rates complained of, either class or commodity, were unjust or unreasonable in and of themselves and the Interstate Commerce Commission in its report and order does not find that the several commodity rates complained of were either unjust or unreasonable in and of themselves, but does find, basing its finding solely and exclusively upon a comparison of said commodity rates from Shreveport to Texas with the commodity rates in force between points in Texas for equal distances, that said commodity rates between Shreveport and Texas were unjustly and unduly discriminatory, all of which will more fully appear from the report and order of the Commission hereinabove referred to. That the power of the Interstate Commerce Commission under the law, as petitioners, are informed and believe and, therefore, charge, was and is to find whether or not the commodity rates established
14 by the carriers and complained of by the Louisiana Commission were in themselves unjust and unreasonable and unless they found them so to be to continue them in force and if they found them so to be to prescribe rates in themselves just and reasonable. Your petitioners aver that the Interstate Commerce Commission has wholly failed and refused to pass upon the ques-

tion of the reasonableness of the commodity rates established by the carriers and complained of in said cause and made no finding that they were in any respect unjust or unreasonable, but held that such rates discriminated against the City of Shreveport, because for equal distances they were greater than the rates established by the Railroad Commission of Texas from the Cities of Dallas and Houston and other points in Texas to apply on traffic originating at such points and destined to points within the State of Texas and wholly carried within that state, such traffic being entirely within the State of Texas and said rates being established by the Railroad Commission of Texas under circumstances hereafter set forth.

VI.

That heretofore, to-wit, on or about the 21st day of April, 1891, the legislature of the State of Texas, in pursuance of a constitutional provision duly authorizing it thereto passed an act creating the Railroad Commission of Texas with full and complete power over all intra-state railroad traffic. The said act gives the Railroad Commission of Texas power to classify freight, to fix reasonable rates for transportation of freight between points within the state, to fix different rates for different railroads, for different lines
15 under the same management, and for different parts of the same line and to change and alter said rates. That said act likewise confers power upon the Railroad Commission of Texas to correct abuses in the management of railways and confers upon that body large and comprehensive powers in the control, management and operation of railways within that state. That since the passage of the original act hereinabove referred to, amendments and additions have been made thereto conferring upon said Commission power to make freight and passenger rates to take immediate effect or at such time as might be fixed, whenever an emergency shall arise, the sufficiency of which emergency was to be determined by said Commission and also conferring upon said Commission power temporarily to suspend existing rates. That under and by virtue of the laws so passed by the legislature of the State of Texas, the Railroad Commission of Texas has established and enforced from the time of its creation, rates, tariffs, regulations and classifications on all and every character of property whatsoever transported by railroads between points in the State of Texas and have enforced the observance of same. That under the provisions of said Railroad Commission Act the Railroad Commission of Texas has full power and authority to initiate and establish absolute rates. That the carriers thereunder have no right under the law to charge, demand or receive a greater or less rate than that fixed by the Railroad Commission for the carriage either of freight or passengers. That a departure from the rates so established by the Railroad Commission of Texas is made an offense punishable by severe penalties; that to charge, demand or receive a greater rate
16 than that fixed by the Commission is declared an extortion under the act punishable by fine, accruing to the State of

Texas, of not less than $500 nor more than $5,000, and in addition to the penalties thus accruing to the State of Texas, collection of which is enforced by the order of the Railroad Commission of Texas through suits by the Attorney General of said state acting under its direction, a penalty accrues to the individual so charged or paying said excessive rate of not less than $125 nor more than $500. That to charge a less rate than fixed by the Commission of Texas is a violation of the order of said Commission, punishable by fine, collected as above stated, of not more than $5,000, all of which will more fully appear from Exhibit B, hereto attached, and hereby made a part of this petition, and is prayed to be taken and considered as fully as if set out at length herein. That under said act the rates, rules, orders and regulations of the Railroad Commission of Texas cannot be collaterally assailed and are held to be conclusive unless set aside in a direct action brought for that purpose against the Railroad Commission of Texas and unless shown in such proceeding to be unjust and unreasonable by clear and satisfactory proof, which clear and satisfactory proof has been defined by the Supreme Court of the State of Texas the court of highest and ultimate jurisdiction in said state, to be proof beyond a reasonable doubt. That said Supreme Court of the State of Texas has held that the Railroad Commission of Texas has with regard to the initiation and establishment of rates all powers possessed by the railways themselves prior to the creation of said Commission. That

17 from the date of its installation under the laws aforesaid the Railroad Commission of Texas has continuously exercised the powers conferred by said act and other acts of the legislature of the State of Texas amendatory thereof and supplementary thereto in the fixing of rates within the State of Texas, for the distribution therein of the products of manufacturers and wholesalers and others within the State of Texas, and has continuously exercised the power of making emergency rates within the State of Texas when rates into that state from points beyond the state were reduced in such manner as in the judgment of the Railroad Commission of Texas injuriously affected the interests of manufacturers, wholesalers, jobbers and others within that state.

VII.

That the rates fixed by the Texas Railroad Commission on all articles and commodities complained of by the Louisiana Commission were and are unjustly low and were less than just and reasonable rates. That in order to preserve the competitive territory of northeastern Texas lying between Dallas and the Arkansas-Texas and Louisiana-Texas state lines as a territory in which Dallas and other manufacturers and merchants might overcome competition from points without the state the Railroad Commission of Texas established distance rates which were 80 per cent. of their standard distance class rates and on a number of commodities applied the same percentage of their standard distance commodity rates over the following lines of railway: The Texas & Pacific Railway, Deni-

son, Pacific & Suburban Railway east of and including Denison, Sherman and Dallas, but not from Texarkana and Waskom and intermediate points; and between points on the Missouri, Kansas & Texas Railway Company of Texas east of and including McKinney, but not from Jefferson, Waskom and intermediate points; and between points on the St. Louis Southwestern Railway Company of Texas east of and including Sherman, Plano and Dallas and north of and including Tyler, but not from Texarkana; said rate adjustment being set out in Circular No. 1178 of said Railroad Commission of Texas, effective September 7, 1900, as amended by Circular No. 1531, effective February 10, 1902, which said order is attached, marked Exhibit C and made a part hereof. The said Commission gave as its reason for the installation of said special rates of 80 per cent. of the standard distance rates applicable between other points within the State of Texas, that the inbound interstate rates to Shreveport and Texarkana were so far less than the inbound interstate rates to Dallas and other Texas distributing points that said cities and distributing points were unable to compete with said cities of Texarkana and Shreveport for the business of the intermediate towns, cities and communities. Your petitioner alleges that the standard distance scale of rates of the Texas Commission on the classes and commodities involved herein for the several distances involved in the order of the Interstate Commerce Commission herein, by reason of the lack of density of traffic, and of the connection of said mileage scale of rates with the blanket or common point territory provided in the rules and regulations of the Texas Railroad Commission are unjust and unreasonably low in and of themselves and that said 80 per cent. of said standard rates prescribed in said circular of the Railroad Commission of Texas hereinabove referred to is inherently unreasonable and unjust.

VIII.

That your petitioner and all of the Texas carriers, including those made parties to said petition of the Railroad Commission of Louisiana, recognized that the rates established by the Railroad Commission of Texas were unjust and unreasonable and protested against the same, but notwithstanding such protest said Commission installed said rates although they were unreasonably low and non-compensatory, and your petitioner and said Texas carriers have obeyed and accepted the same for the reason that non-observance thereof would have made them and each of them liable to prosecution and extreme and severe penalties, your petitioner being advised and believing that the making of intra-state rates was within the exclusive jurisdiction of the Railroad Commission of Texas and then believing and now believing that the Interstate Commerce Commission was wholly without power, authority or jurisdiction to make such intra-state rates the legal measure of interstate rates. Your petitioner further alleges that it accepted said rates so prescribed by the Railroad Commission of Texas for the reason that it was advised and believed that under the broad powers conferred upon the Railroad Commission of Texas it would be extremely difficult, if not wholly

impossible, to set aside said rates without attacking the whole
20 body of rates established and enforced by the Railroad Commission of Texas; and your petitioner avers that the Railroad Commission of Texas asserts and by its continuous practice has indicated that it has the right under the laws of said state to so adjust rates wholly within the State of Texas as to enable cities, towns and communities within said state to successfully compete with cities, towns and communities without said state, and on information and belief petitioner alleges the fact to be that said Railroad Commission of Texas, if in its judgment it believes that the rates made by the order of the Interstate Commerce Commission herein complained of will injuriously affect the commerce of the cities and towns within the area covered by said order, will further reduce said intra-state rates in order to meet the competition created by the order herein complained of; and petitioner further avers that the order of the Interstate Commerce Commission herein complained of leaves petitioner and all other carriers affected thereby without relief in this: that the Railroad Commission of Texas continuously reduces the intra-state rates in order to meet the interstate competition, whereupon the Interstate Commerce Commission reduces the interstate rates for the purpose of meeting the intra-state competition whereby your petitioner and the other carriers affected must suffer the continuous reduction of rates not justified by proof or finding that the rates so reduced are unjust or unreasonable in and of themselves; that your petitioner being wholly without power to raise the intra-state rates so adopted by the Interstate Commerce Commission as a legal measure of the justness of the interstate rates is wholly without remedy in the premises.

21 IX.

That said order of the Interstate Commerce Commission herein complained of provides that your petitioner shall cease and desist from charging higher rates upon any commodity from Shreveport into Texas than are contemporaneously charged for the carriage of such commodity from Dallas toward Shreveport for an equal distance; that the State of Texas has a classification of its own in which most articles are differently classed from the classification provided in the Western Classification and in the great majority of instances carload minima in said Texas Classification are much less than in Western Classification and the mixtures are different under the Texas Classification, a jobber being able to substantially make his own mixture of any kind of freight, the result being that movement of freight under the Texas Classification is far more onerous upon the carriers than the movement of freight under the Western Classification and the rates received for carrying any given item of traffic returning less revenue to the carriers than if carried under Western Classification; that the Interstate Commerce Commission adopts the Western Classification in regard to freight carried from Western Classification territory into the State of Louisiana as well as into the State of Texas, but under the order of said Commission herein complained of your petitioner and all other carriers affected thereby, in

applying to traffic moving out of Shreveport the rates established by the said order, will be compelled to adopt the Texas Classification, so that by the establishment of said rates the Interstate Commerce Commission has discriminated against your petitioner and other carriers affected thereby; that except as to Shreveport on interstate traffic moving from Western Classification territory into other parts of Texas the Western Classification will control. Said Western Classification has been adopted by the Louisiana Commission applying to freight moving from one point in the State of Louisiana to another point in the State of Louisiana, so that the order of the Interstate Commerce Commission discriminates in favor of Shreveport in Louisiana and works an unjust and unlawful discrimination against carriers handling the Shreveport traffic destined to Texas.

22

X.

Your petitioner shows that there is a large traffic in the articles and commodities mentioned and described in said order of said Interstate Commerce Commission made in said case No. 3918 transported by petitioner from points outside of Texas through Shreveport and by your petitioner from distributing points in Texas to that portion of the territory covered by said order, for which transportation your petitioner now receives and has received a large revenue in the way of freight charges; that the order so promulgated by said Interstate Commerce Commission will materially reduce the receipts of your petitioner from such transportation. Petitioner on information and belief avers the facts to be that the rates on a large amount of traffic in the territory along and adjacent to the Mississippi River are exceedingly low by reason of the fact that such traffic can be and is transported by water over said river and its tributaries and over the Gulf of Mexico and the waters with which it connects; that this is especially true with reference to interstate freight traffic; that the town of Shreveport, Louisiana, is situated on the Red River, which is a tributary of the Mississippi River, and is nearer the Mississippi River than the Texas distributing points referred to in said cause No. 3918, and that Shreveport is connected with the Mississippi River by several lines and roads of railway and is accorded lower rates on inbound freight by reason of its location as aforesaid than are accorded to distributing points in Texas mentioned and described in said cause No. 3918 and in the order made in said cause, and that, therefore, the City of Shreveport and the territory adjacent thereto receive and have the benefit of these lower rates, and that the interests in whose behalf the complaint was made in said cause No. 3918, and for whose benefit the order was entered therein, have and receive the benefits of the lower rates on freight traffic aforesaid, and that when such rates are added to the outbound rates from Shreveport it will be found, as your petitioner is informed and believe-, and on such information and belief alleges the facts so to be, that the total transportation charge on the commodities and classes mentioned and described in said order, under existing rates, to the territory mentioned and described therein, handled by the

23

said interests at Shreveport, will not be materially higher than the total transportation charge will be on the same commodity handled into the same territory from the distributing points in Texas directly affected by said order. Your petitioner is informed and be-
24 lieves, and on such information and belief allege- the facts to be, that in most instances the total transportation charges are less. Your petitioner is further informed and believes, and on such information and belief allege- the facts to be, that if said order of the Interstate Commerce Commission herein complained of is enforced that on the great volume of the freight traffic referred to by said order the total transportation charge into and out of Shreveport to the territory directly affected by said order will be largely reduced and will be much lower than the total transportation charges on freight traffic which moves into and out of the Texas distributing points to the said territory; that thereby a large amount of freight traffic now handled by your petitioner from Texas distributing points to said territory and from points outside of Texas other than Shreveport will be transferred to the business men of Shreveport from the distributing points in Texas aforesaid and from the distributing points outside of Texas other than Shreveport, and that in consequence thereof it will entail upon your petitioner large and substantial losses in freight revenue as is hereinafter more specifically set out.

Petitioner further shows that by reason of the provisions of the laws regulating interstate commerce, and especially the provisions of Section 4 of the said act as amended, and natural and competitive conditions as to water rates, rail rates and commercial competition, that the material reductions made from Shreveport to Texas points mentioned and described in said order will necessarily disturb and reduce freight rate conditions over a very large scope of territory; that your petitioner and other interested lines of railway have
25 always heretofore tried to adjust fairly, justly and reasonably the interstate rates to and from all points in the Southwest so as to prevent unreasonable discriminations and unduly prejudicial conditions in any part of said southwestern territory; that a large proportion of the classes and commodities on which material reductions are made by such order of said Interstate Commerce Commission in said cause No. 3918 are transported into southwestern territory through various gateways leading thereto, such as Chicago, Kansas City, St. Louis, Little Rock, Memphis, Vicksburg, Shreveport, New Orleans, Galveston, and other minor gateways; that the material reductions made by said order on a portion of the line over one of the main channels leading to and from the low rates on the Mississippi River will of necessity produce a reduction in the transportation charges from many of the other gateways; that for many years rates from all defined territories into southwestern territory, including territory affected by the order in question, have been based on St. Louis, the rates from defined territories being made by adding or deducting certain differentials to or from the St. Louis rate; that the rates from Shreveport have always been a differential under the St. Louis rate; that if said rate is further reduced as is compelled by

the order herein complained of, said reduction will of necessity force reductions in rates from St. Louis and the defined territories hereinabove referred to, or the great bulk of said business will flow through Shreveport and traffic flowing in through the other gateways above referred to will be greatly and materially reduced. Your petitioner therefore avers that said order of the Interstate Commerce
26 Commission will effect a reduction in rates on practically all the classes and commodities described in said order to the entire State of Texas, and will effect a reduction in rates thereon to points in many other states in the Southwest and to the Republic of Mexico, all of which reductions in rates will result in a reduction in revenue of your petitioner and the other carriers affected thereby.

XI.

Your petitioner alleges that if said order becomes effective the reduction in the annual revenues of your petitioner will be approximately —.

Your petitioner alleges that the aggregate, actual, present value of its properties is not less than —; that the net earnings of your petitioner for the year ending June 30, 1911, after deducting interest on its bonded debt of — were —, and that based upon its earnings and expenses from July 1, 1911, to February 1, 1912, petitioner is informed and believes, and on such information and belief allege- the fact to be, that its net earnings, after deducting the interest on bonded debt as aforesaid, will not exceed —. Your petitioner therefore avers that the reductions made by the order herein complained of will not permit it to earn a reasonable or just return upon the value of its properties as alleged, and will amount to a confiscation thereof, and will operate to deprive it of its property without due process of law.

27

XII.

Wherefore, in view of the premises and the matters and things hereinbefore set forth, this petitioner says:

(1) That the order of the Interstate Commerce Commission made in said cause No. 3918 fixing commodity rates upon the lines of your petitioner was made without power or authority either directly or indirectly conferred upon the Interstate Commerce Commission, because your petitioner says that, while under subdivision 3 of Section 8 of Article 1 of the Constitution of the United States the Congress of the United States has power "to regulate commerce with foreign nations, among the several states and with the Indian tribes," the tenth amendment of the Constitution of the United States provides that "the powers not delegated to the United States by the Constitution nor prohibited by it to the states are reserved to the states respectively or to the people," and petitioner says that, while by said provisions power was conferred upon Congress to regulate interstate and foreign commerce and commerce with the Indian tribes, no power was conferred to regulate or interfere with intrastate commerce, and that this lack of power was fully recognized in

the Act to Regulate Interstate Commerce as originally enacted and subsequently amended.

That by the first section of the Act to Regulate Commerce, it is provided "that the provisions of this Act shall apply to any corporation, * * * to any common carrier, or carriers, engaged in the transportation of passengers or property wholly by
28 railroad, * * * from one state or territory of the United States, * * * to any other state or territory of the United States, * * * or from any place in the United States to an adjacent foreign country, etc." Your petitioner avers that this provision means that all the provisions in this Act to Regulate Commerce are limited to the commerce mentioned in this section, and respectfully show- that this is made more evident by the proviso which is added to the first section, which declares "That the provisions of this Act shall not apply to the transportation of passengers or property * * * wholly within one state, etc."; whereby it is provided, as your petitioner avers that none of the provisions, including the provision against discrimination, shall apply in any manner whatsoever to the transportation of property wholly within one state, and that when said Act was so amended as to confer upon the Interstate Commerce Commission power, after finding that any rates or charges, classifications, regulations or practices whatsoever, were unjust and unreasonable, or unjustly discriminatory or unduly prejudicial or preferential, or otherwise in violation of any provision of the Act to prescribe what would be just and reasonable, individual or joint rate, or rates, classifications, regulations or practices to be thereafter followed, that no power or authority was thereby conferred upon the Interstate Commerce Commission, or attempted to be conferred upon the Interstate Commerce Commission to in any way prescribe rates, regulations or practices to be observed by common carriers with reference to transportation of property wholly within one state; and your petitioner avers that it
29 is informed and believes, and charges the fact to be, that the order made by said Interstate Commerce Commission in said cause 3918, fixing commodity rates upon lines of your petitioner, was made without authority or power vested in said Commission to make the same, and is in violation of the Act to Regulate Commerce and the amendments thereof, and of the provisions of the Constitution of the United States, as hereinbefore set forth, and is therefore void.

(2) That said order of said Interstate Commerce Commission is, for the reasons hereinbefore set forth, unreasonable and unjust and, as no power or authority is conferred upon the Interstate Commerce Commission to make or promulgate or enforce any order that is unreasonable or unjust, said order is therefore void.

(3) Said order, in so far as same undertakes to fix and direct the installation of commodity rates upon the lines of your petitioner, is invalid and void for the reason that there was no evidence before said Interstate Commerce Commission that the commodity rates complained of were unjust or unreasonable in and of themselves, and the order of said Interstate Commerce Commission wholly fails to find that said rates were unreasonable in and of themselves, and

wholly fails to find that the commodity rates directed by the said commission to be installed by your petitioner are reasonable within themselves, nor was there any evidence before the Interstate Commerce Commission by which said Commission could find that the rates so ordered to be installed were just or reasonable within themselves.

(4) That, for the reasons hereinbefore set forth, said order
30 of said Interstate Commerce Commission deprives petitioner, of its property without due process of law and is the taking of private property for public use without just compensation in violation of the fifth amendment of the Constitution of the United States, and is therefore void.

XIII.

Petitioner says that, as hereinbefore alleged, said order of the Interstate Commerce Commission becomes effective by its terms on the 1st day of June, 1912, and that if petitioner is compelled to install and enforce the rates therein provided for, it will suffer irreparable damage.

Wherefore, your petitioner prays that due service of this petition be made on respondent herein, commanding it to answer the matter thereof (but not under oath, answer under oath being expressly waived); that notice of the application for injunction hereby made be duly served on the respondent, on the Attorney General of the United States and on the Interstate Commerce Commission; that an immediate order restraining the enforcement of said order of the Interstate Commerce Commission be made, and an order of temporary injunction restraining the enforcement of said order of the Interstate Commerce Commission pending final hearing of this cause, and that on such final hearing the said order of said Commission of date March 11, 1912, be in all things enjoined and set aside and held for naught; and that the Interstate Commerce Commission, its members, agents, attorneys, servants and representatives be forever enjoined from enforcing said order or taking
31 any steps or instituting any proceedings for the enforcement thereof; that said rates so established by the Commission be declared to be unjust and unreasonable; and petitioner prays for general and special relief as the equities of the case may warrant.

T. J. FREEMAN,
HENRY G. HERBEL,
Solicitors for Petitioner.

32 STATE OF ILLINOIS,
County of Cook, ss:

I, J. B. Payne state upon oath that I am the Agent of the Texas & Pacific Railway Company, petitioner in the above entitled and numbered cause, and as such am authorized to make this affidavit; that all allegations of fact set forth in said petition are true, and where alleged upon information and belief I believe them to be true.

J. B. PAYNE.

Sworn and subscribed by the said J. B. Payne before me, the undersigned authority, this the 7th day of May, A. D. 1912.

[NOTARIAL SEAL.] IRVING O. KOSCHE,
Notary Public in and for the County of Cook, State of Illinois.

My commission expires April 17, 1913.

33 EXHIBIT A.

Opinion No. 1813.

Before the Interstate Commerce Commission.

No. 3918.

J. J. MEREDITH, SHELBY TAYLOR, and HENRY B. SCHREIBER, Constituting the Railroad Commission of Louisiana,
v.
ST. LOUIS SOUTHWESTERN RAILWAY COMPANY et al.

Decided March 11, 1912.

Report and Order of the Commission.

34 No. 3918.

J. J. MEREDITH, SHELBY TAYLOR, and HENRY B. SCHREIBER, Constituting the Railroad Commission of Louisiana,
v.
ST. LOUIS SOUTHWESTERN RAILWAY COMPANY et al.

Submitted January 16, 1912. Decided March 11, 1912.

The rates from Shreveport, La., to points in eastern Texas are higher than are maintained from Dallas, Houston, and other cities within Texas to such points under substantially similar circumstances and conditions. This complaint attacks the rates from Shreveport as unreasonable and as discriminatory when compared with Texas intrastate rates of the same carriers; Held,

1. That the present class rates out of Shreveport to certain points in Texas on the Texas & Pacific Railway, and on the Houston, East & West Texas Railway, are unreasonable, and reasonable rates are prescribed for the future.
2. That the present relation of rates gives an undue preference to the Texas cities in question and effects an unlawful discrimination against Shreveport, and the carriers ordered to cease and desist from charging higher rates upon any commodity from Shreveport to Dallas or Houston or points intermediate thereto than are contemporaneously charged by them for the carriage of such commodity to equidistant points from Houston or Dallas toward Shreveport.

3. That if a state, by the exercise of its lawful power, establishes rates which the interstate carrier makes effective upon state traffic, that carrier does so with the full knowledge that the federal government requires it to apply such rates under like conditions upon interstate traffic. To say that an interstate
35 carrier may discriminate against interstate commerce because of the order of a state commission would be to admit that a state may limit and prescribe the flow of commerce between the states.
4. That section 3 of the act, forbidding undue discrimination in favor of or against any person or locality, applies not only as to two interstate hauls but also as to two hauls one of which is interstate and the other intrastate, and the fact that the carrier's rates in the latter case are established by a state commission does not relieve the carrier of the paramount duty, which rests upon it irrespective of its obligation to the state, to so adjust its rates that, as to interstate traffic, justice will be done between communities regardless of state lines. The effective exercise of its power affecting interstate commerce makes necessary the assertion of the supreme authority of the national government, and Congress has appropriately exercised this power in the provisions of the act touching discrimination.
5. That the provision in section 1 that the act shall not apply to commerce wholly within a state was intended as a recognition of the fact that Congress was not assuming to regulate transportation entirely within the borders of a state and does not by the broadest construction justify the inference that an interstate carrier may pursue a policy of rate making within a state that would affect unlawfully commerce among the states and thus violate the express prohibition of the act against discrimination affecting interstate commerce.
6. That the policy of denying to Shreveport similar privileges in the concentration of cotton as are accorded to Texas cities is also discriminatory, and the carriers will be ordered to make applicable at Shreveport whatever lawful practices obtain in this connection at Texas points on defendant's lines under like condition.

Walter Guion, R. G. Pleasant, W. M. Barrow, J. J. Meredith, George T. Atkins, Jr., and Luther M. Walter for complainants.

Baker, Botts, Parker & Garwood, H. A. Scandrett, and F. C. Dillard for Houston & Shreveport Railway Company and Houston, East & West Texas Railway Company.

S. H. West, E. B. Perkins, Hiram Glass, W. F. Murray, and Roy F. Britton for St. Louis Southwestern Railway Company; St. Louis Southwestern Railway Company of Texas; and Eastern Texas Railroad Company.

36 A. S. Coke, A. H. McKnight, and J. L. West for Missouri, Kansas & Texas Railway Company of Texas.

J. S. Hershey for Gulf, Colorado & Santa Fe Railway Company;

Texas & Gulf Railway Company; and Gulf & Interstate Railway Company.

T. J. Freeman, H. G. Herbel, and N. M. Leach for Texas & Pacific Railway Company and International & Great Northern Railroad Company.

John A. Smith for New Orleans Cotton Exchange and New Orleans Board of Trade, interveners.

C. W. Hayward for New Orleans Board of Trade, Limited, and Wholesale Grocers' Association of New Orleans, interveners.

H. H. Haines for Galveston Commercial Association, interveners.

R. B. Walker for Jefferson, Tex., interests, interveners.

T. L. Torrans for Torrans Manufacturing Company, intervener.

J. T. Webster for cotton shipping interests of Pittsburg, Tex., interveners.

Leo Krouse for Texarkana Board of Trade, intervener.

E. W. Anderson for Monroe Progressive League, intervener.

E. S. Hicks for Tenaha, Tex., interests, interveners.

E. H. Carter and J. L. Williams for east Texas shippers, interveners.

W. R. Crawford for Shelby county, Tex., interests, interveners.

H. C. Wiley for Garrison, Tex., interests, interveners.

J. L. Chadwick for Penola county, Tex., interests, interveners.

Report of the Commission.

LANE, *Commissioner*:

This proceeding places in issue the right of interstate carriers to discriminate in favor of state traffic and against interstate traffic. The gravamen of the complaint is that the carriers defendant make rates out of Dallas and other Texas points into eastern Texas which are much lower than those which they extend into Texas from Shreveport, La. A rate of 60 cents carries first class traffic to the eastward from Dallas a distance of 160 miles, while the same rate of 60 cents will carry the same class of traffic but 55 miles into Texas from Shreveport. For further illustration of the rate situation reference is made to the appendix of this report.

37 The railroad commission of Louisiana has brought this proceeding under direction of the legislature of that state for two purposes: (1) To secure an adjustment of rates that will be just and reasonable from Shreveport into Texas, and (2) To end, if possible, the alleged unjust discrimination practiced by these interstate railroads in favor of Texas state traffic and against similar traffic between Louisiana and Texas.

The railroads deny that the rates out of Shreveport are unreasonable, but place their defense mainly upon the proposition that they are compelled by the railroad commission of Texas to effect the discrimination here involved.

Policy of the Texas Commission.

The railroad commission of Texas, while not made a party to this proceeding, was notified of the hearing but was not represented

thereat. The position which it takes, however, appears from the following letter which was incorporated in the record:

"AUSTIN, TEXAS, *September* 12, 1911.

Mr. H. B. Pitts, Sec'y Progressive League, Marshall, Texas.

DEAR SIR: We beg to acknowledge the receipt of your letter of the 9th inst. with which you inclose letter from Mr. A. T. Kahn, of Shreveport, to Mr. W. L. Martin, of your city, with reference to securing a reduction of rates on classes from Shreveport, and we note your request for a statement from this commission in order that you may properly understand the matter involved, and in reply you are advised:

For the rates referred to from Shreveport to Texas points to be reduced would, in the opinion of this commission, be very much against the interests of the Texas jobber whom it has been the endeavor of this commission to protect, and by way of explanation we will state:

Shreveport enjoys now, and has for years past, very low carload rates from northern and eastern points, much lower than the carload rates on the same commodities from the same points to Texas jobbing points. These carload rates in, plus their local rates out, to Texas points gave them, of course, an advantage over the Texas jobber, and to offset this the commission adopted an adjustment of rates which you will find on page 263 of our nineteenth annual report, copy of which is being mailed to you under another cover. For
the local rates to be now reduced from Shreveport to Texas
38 points would tend to counteract the effect of the commission's
action, and to place the Texas jobber at the same disadvantage under which he previously labored.

Yours respectfully, ALLISON MAYFIELD
Chairman."

This letter supports on the one hand the theory of the Louisiana Commission that the Texas Commission is acting in loco parentis to the jobbing interests of Texas, and on the other hand supports the theory of some of the carriers justifying the higher local rates out of Shreveport upon the ground that the through rate from point of origin in the north and east to Texas, when made up of the rate to Shreveport plus the local out of Shreveport, is not unreasonable. (See appendix.)

This latter contention has been made before the Commission at various times, and we have uniformly held that a carrier could not impose an unreasonably high local rate upon any community because of the advantages that it properly enjoyed for securing low inbound rates. See Commercial Club of Omaha v. C., R. I. & P. Ry. Co., 6 I. C. C. 675; Daniels v. C., R. I. & P. Ry. Co., 6 I. C. C. 458; Eau Claire Board of Trade case, 5 I. C. C., 293; Savannah Bureau of Freight & Transportation case, 8 I. C. C., 377.

It is not the function of a railroad to equalize the commercial advantages of cities. If Shreveport is so situated by reason of her position on the Red River and her proximity to the Mississippi that

the railroads serving her are justified in extending to her inbound rates which are lower than those extended to Dallas and other cities in Texas, this is her advantage of which she may take full benefit. The carriers may not say that they will absorb in the outbound rates such advantages as Shreveport has upon her inbound rates. Railroads may assume that they have the right to control the destinies of cities and limit their jobbing territory or expand it as they see fit, but this is not a policy consistent with the theory of governmental regulation. If the inbound rates to Shreveport are compelled by natural conditions the discrimination in her favor is not undue. If, however, this is an artificial relation established by the railroads, it is unlawful. If natural, the railroads certainly should not destroy it. If artificial, it never should have been established and should now be removed. The act to regulate commerce is the outgrowth of a popular conviction that the railroads when unhampered by restrictive law attempted successfully to prescribe and define the chan-
39 nels of commerce in such way as to favor certain localities, industries, and individuals. By the institution of this act Congress substituted for the regulation of trade by common carriers the regulation of common carriers by the government in accordance with certain prescribed rules to be applied as to ascertained conditions. We do not here pass upon the relation between the rates into Shreveport from the north and east and those extended by the carriers to Texas points. If Texas communities have just reason to complain of this relationship which has been created by the carriers, hearing will be given them upon this matter and the full power of the Commission exercised to correct any wrong which may exist in this situation.

There appears to be little question as to the policy of the Texas commission. It is frankly one of protection to its own industries and communities. We find in the early reports of that commission, which are quoted at length in the record, evidences that the Texas commission believed that the interstate carriers operating from the north and the east into Texas were pursuing a policy hostile to the development of that state. The Texas commission was conscious that it was within the power of these interstate carriers to so adjust rates as to make Texas entirely or largely dependent upon other states and thus restrict the growth of her cities and fix the nature of her industries, the employments of her people, and the character of her civilization so far as these depend on economic and industrial conditions. With this thought in mind the Texas commission sought to establish a Texas policy and to make the railroads within that state contribute in the manner believed by her own people to best subserve their own interests. Accordingly we find in the fifth annual report of that commission (page 5) the following:

"To Texas as a whole it is of the most vital concern that there should be within her limits at proper places jobbing and manufacturing establishments. Besides adding to the citizenship of the state a desirable population and furnishing employment to persons already in our midst and enhancing the taxable values of the state, and, as a consequence, under wisely administered government, aiding in

ultimately reducing the rate of taxation, and besides the home market they afford to the tiller of the soil and other producers, including manufacturers, for their products, if men, in Texas, having the capital to engage in a wholesale business or in a manufacturing enterprise, for the success of which natural conditions are favorable, they have as much right to invest their means in
40 such business or enterprise as a man in Illinois or Missouri has to embark in such business or enterprise in his state. Some of the Texas lines of railway, constituting parts of interstate systems of railway interested in long hauls, appear to be hostile to a policy which would foster Texas jobbing and manufacturing interests, while other lines manifestly favor such a policy. Outside cities bring to bear every pressure they can to coerce all Texas lines into a course favorable to their interests and adverse to the interests of Texas cities with respect to jobbing and manufacturing. * * * This commission has always had in mind the securing of relatively just state and interstate rates, with a view of enabling Texas merchants and manufacturers to do business in competition with outsiders."

It was apparently not the prime desire of the Texas commission that rates within the state should be low, but rather that the interstate roads should not make rates so low upon commodities which Texas could supply to herself as could hinder the growth of her cities as manufacturing and distributing centers.

"This commission has often stated to the freight agents and traffic managers in their meetings with it that if the railroad companies engaged in interstate shipments would make and maintain rates which would be fairly compensatory to them on such shipments this commission would do all in its power by its rates to secure them reasonable revenue on their railroad investments in this state, and we now repeat that statement, but this suggestion contemplates good faith on both sides in the making and maintenance of rates." (Fourth annual report, page 19.)

Again we find the thought expressed in the letter from the chairman of the Texas state commission, quoted above, expressed in the report of that commission for 1896 (page 10), wherein it is said:

"The commission did not feel disposed when it gave the notice in the form stated, nor has it ever been inclined to deny to the railroad companies such rates as are reasonably compensatory even though to do so would necessitate an increase in rates; yet as a condition precedent to anything like a general increase in state rates the commission was and is determined that the railroad companies shall show that they received reasonable compensation for transportation by them of interstate freights in order that it may be seen by the commission that they are not sacrificing their revenues on interstate hauls and seeking to recoup their losses against
41 the people of Texas. * * * In making the demand there was no injustice to the railroads, for, viewed simply as roads operating in the state, it is to their interest to favor our policy of bringing goods from abroad into Texas cities in carload quantities and in distributing them from the jobbing houses in such cities in

less-than-carload quantities among the retailers. As the freight charges they receive on local less-than-carload shipments in the state added to what they receive in the division of through rates on carload shipments to the Texas jobber usually amount to more than they receive in the division of through rates on less-than-carload shipments from a jobber outside the state to a retailer in the state; and it can be shown to be to their advantage to pursue a policy favorable to the development of manufacturing in Texas. While by pursuing, along the lines indicated, a course favorable to the upbuilding of Texas jobbing and manufacturing enterprises, the interests of Texas roads considered as such would be subserved, yet, constituting, as some of the Texas roads do, parts of interstate systems, the interests of the systems rather than the interest of the Texas lines are too often regarded. Here lies the main difficulty, in our opinion, in securing a just arrangement of interstate rates. It can be met either by those lines which are not dominated by outside influences taking a firm stand and co-operating with this commission to compel the other lines to act justly toward Texas interests, or, if adjustments can not be made by consent, by the Interstate Commerce Commission, with an intelligent grasp of the situation, when appealed to, making the proper adjustment."

Quotations need not be multiplied to demonstrate that Texas has a policy of her own with respect to the protection of home industry which has been made effective by consistent and vigorous action on the part of her commission. If interstate carriers were determined upon a long-haul policy which tended to make the people of Texas dependent upon the merchants and the manufacturers of other states the Texas commission frankly declared that it would meet this policy in such way as to save the interests of Texas from being at the mercy of these interstate carriers. At the time when these reports were written, from which quotation has been made, it is to be noted that the Interstate Commerce Commission lacked the powers which it now has; rates were unstable, competition was intense by means of rebates, and it is not unfair to say that there was no system of rate-making into the southwest upon which the Texas commission could rely. That interstate rates from northern points are not now so low as to cause the Texas commission to indulge the fears
42 which possessed it in earlier years is made manifest by the fact that it sought before this Commission within two years the reduction of class rates from St. Louis. See R. R. Commission of Texas v. A., T. & S. F. Ry. Co., 20 I. C. C., 463. This was a proceeding in the interest of the consumers and not primarily for the protection of jobbing interests.

That Texas, however, has not abandoned her purpose to retain so much of her trade within her own state as is possible is evidenced by what is known as the Texarkana rate adjustment. See Nineteenth Annual Report, R. R. Commission of Texas, page 263. By this adjustment the normal scale of rates applying upon a large number of articles, including carload and less-than-carload shipments of all articles which are, in carloads, subject to fifth class and class A, B, C D, and E rates, was reduced by 20 per cent: 1. Be-

tween points on the St. Louis Southwestern Railway of Texas east of Pacific Suburban Railway east of and including Denison, Sherman, and Dallas, but not from Texarkana, Waskom, and intermediate points on the Texas & Pacific Railway. 2. Between points on the Missouri, Kansas & Texas Railway of Texas east of and including McKinney, but not from Jefferson, Waskom, and intermediate points on the Missouri, Kansas & Texas Railway of Texas. 3. Between points on the St. Louis Southwestern Railway of Texas east of and including Sherman, Plano, and Dallas, and north of and including Tyler, but not from Texarkana.

Then follows this significant language:

"Ruling.—Rates provided in this adjustment are not available on shipments to or from Texarkana."

Thus the interior cities of Texas were protected against what was doubtless deemed the unfair competition of Texarkana, a border city, and other similarly situated points.

One illustration of the policy pursued by the Texas commission by which it is claimed advantage is given to Texas cities as against Shreveport is in the matter of the concentration of cotton. We are asked to establish concentration rules at Shreveport upon Texas cotton. The record discloses extensive correspondence upon this question between the railroads and the Texas commission, a portion of which is here given.

"The Honorable Railroad Commission of Texas, Austin, Tex.

GENTLEMEN: We have received requests from cotton men along our line south of Shreveport, also on the Texas & Gulf and Timpson & Henderson, also merchants at Shreveport, for the establishment of a concentrating privilege at Shreveport on cotton from the points indicated.

43 We have hesitated so far to establish any such privilege, feeling that it might not meet with the entire approval of the railroad commission of Texas. However, we are advised that such privilege would give a better market for cotton to the producers along the lines indicated, and as such would be an advantage to the Texas farmer.

Under the circumstances, if you will advise us that you do not disapprove of the plans, we will take steps to see if we can not meet the views of our cotton friends in regard to this feature.

Yours truly,

J. R. CHRISTIAN, *G. F. A.*"

Under date of October 6, 1910, Chairman Mayfield wrote Mr. Christian as follows:

"Referring to your letter of September 15th, with respect to the contemplated establishment by your line of a concentrating privilege at Shreveport on cotton from points on your line south of Shreveport, and also from Texas & Gulf and Timpson & Shreveport points, we beg to advise you that your communication has been duly considered by the commission and we beg to state that the

establishment of such an arrangement would not meet with the approval of this commission."

The policy of the Texas commission is, moreover, not without opposition within that state. Galveston, which enjoys low water rates, claims that for this reason she is the object of discrimination, a differential having been placed against distribution from that city. The Galveston Commercial Association has brought suit against the Texas railroad commission complaining of this condition. In that suit Galveston has been successful in the lower court, and it was stated at the hearing in this case that if the Supreme Court sustained the lower court it would probably mean a complete readjustment of rates in Texas; that, in fact, it would be necessary for the Texas railroad commission to make its tariffs upon an entirely different plan, and that the railroads would be prepared to suggest new tariffs to the Texas commission which would alter the relation, not only between Galveston and other Texas cities, but between Shreveport and Texas cities.

The Problem Raised.

The petition of the complainants is that this Commission "establish the same basis of rates of transportation between Shreveport and east Texas points as are accorded by defendants to Texas competitors of Shreveport interests in the same line of business for the same distances."

44 With this petition we can not comply unless such power has been granted us under the first, third, and fifteenth sections of the act to regulate commerce. We have no power to require an interstate carrier to put into effect from an interstate point a state-made schedule of rates; our power is limited to condemning unreasonable rates and fixing maximum rates that are in our judgment just and reasonable. Therefore we may not say that because a carrier has in effect state-made rates upon state traffic such rates shall be established by it upon interstate business, for, to put the matter bluntly, the rates fixed by a state commission are not prescribed as a standard by the act of Congress governing interstate rates of transportation. The Texas rates as such, therefore, we may not prescribe. If, however, they stand the test of reasonableness they may be adopted.

Passing then to the question of discrimination, has this Commission the power to say that whatever rates an interstate carrier makes between points in Texas shall not be exceeded for the same distance under like conditions between Shreveport and Texas points? In other words, may a carrier engaged in interstate commerce discriminate against a city beyond the border of a state by imposing upon that city's traffic rates which deny its shippers access upon equal terms to the communities of an adjoining state?

This is an appeal to the powers lodged in this Commission under the third section of the act—that provision which is aimed at the destruction of undue preference and advantage. We thus meet directly the most delicate problem arising under our dual system of government. Congress asserts its exclusive dominion over inter-

state commerce; the state asserts its absolute control over state commerce. The state for its own purposes establishes rates designed to protect its own communities and promote the development of its own industries. These rates are adopted by the interstate carriers upon state traffic but are not adopted upon interstate traffic. Thus arises a discrimination in favor of communities within the state, and interstate commerce suffers a corresponding disadvantage. May this Commission end such discrimination by saying to the interstate carrier: "You may not distinguish between state and interstate traffic transported under similar conditions. If the rates prescribed for you by state authority are not compensatory upon this specific traffic as to which discrimination is found the burden rests upon you, irrespective of your obligation to the state, to so adjust your rates that justice will be done between communities regardless of the invisible state line which divides them." To which we are compelled to answer, that the effective exercise of its power regarding interstate commerce makes necessary the assertion of the supreme authority of the national government, and that the Congress has appropriately exercised this power in the provisions of the act to regulate commerce touching discrimination.

Power and Policy of Congress.

The theory of our constitution is that a state may not live unto itself alone, either politically or commercially. Under the articles of confederation the several states reserved to themselves certain powers which in their exercise made necessary "a more perfect union." This was established under the constitution, in which, as an outgrowth of experience, it was provided that Congress should have the power "to regulate commerce with foreign nations and among the several states." It is unnecessary to trace the growth and expansion of the national power under this provision of the organic law. With almost each decade some problem has arisen which has brought from the Supreme Court of the United States a fuller interpretation of this power granted to Congress, and underneath each one of these decisions may be found the fundamental doctrine of governmental necessity. The power granted to regulate a commerce by wagon and the sailing ship has been found adequate for the necessities of a national life to which the railway and the telegraph are essential. Under the protection and authority of the federal government our commerce has known no state lines, we have enjoyed freedom of trade between the people of the various states, and our railroad systems have been constructed to convey a national commerce. While chartered by the states they have become the interstate highways of the United States. They are the roads of the whole people and not of any part or section of the people. Congress has commanded that all carriers which engage in interstate commerce shall be linked together as through routes; that they shall provide reasonable facilities for operating such routes; that they shall establish and enforce just and reasonable classifications of property for transportation with reference to which rates,

tariffs, regulations, or practices may be prescribed (section 1); that they shall construct switch connections with any lateral, branch line of railroad, or the private sidetrack of any shipper tendering interstate traffic for transportation (section 1); that they shall not discriminate between persons (section 2), or between connecting lines (section 3); that in time of war or threatened war
46 preference shall be given to military traffic; that the books and files of such carriers shall be open to the inspection of the Federal Commission (section 20); that the Commission may have power to prescribe just and reasonable rates, classifications, regulations, and practices; fix the division of joint rates in certain cases (section 15); prescribe a uniform system of accounts and the manner of keeping the same (section 20); and that the initial carrier shall be responsible for loss or damage to property caused by it or by other carriers over whose lines such property may pass (section 20).

By all these provisions of the law, as by others, Congress has clearly manifested its purpose to unite our railroads into a national system. The law acts only on those which do an interstate business; but in the conveying of property destined from a point in one state to a point in another this brings within the control of Congress all such carriers as do not exclude themselves from participating in such traffic.

"Whilst every instrumentality of domestic commerce is subject to state control, every instrumentality of interstate commerce may be reached and controlled by national authority so far as to compel it to respect the rules for such commerce lawfully established by Congress. (Mr. Justice Harlan, Northern Securities case, 193 U. S., 197.)

While with reference to some of them (instrumentalities of commerce), which are local and limited in their nature or sphere of operation, the states may prescribe regulations until Congress intervenes and assumes control of them; yet, when they are national in their character, and require unformity of regulation affecting alike all the states, the power of Congress is exclusive. (Mr. Justice Field in Gloucester Ferry case, 114 U. S., 203, 204.)"

Construction of the Law.

The power of Congress being unquestioned, we find that as carriers of interstate commerce the defendants under the act (section 3) may not give any undue or unreasonable preference or advantage to any locality or any particular description of traffic in any respect whatsoever, or subject any locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever. Does this mean that as between two points doing interstate business the interstate carrier shall not prefer one over the other, but that as between a point in one state and a point in another state the interstate carrier may unduly discriminate so as to prefer a point in one state as
47 against the other? If this is the meaning of the section, the law has recognized that an interstate carrier may properly

discriminate within a state as against interstate commerce. Such construction is, however, entirely inconsistent with the letter of the statute and with its purpose. A clearer and fairer, and to our minds the only reasonable reading of the law, is one which credits Congress with the intention of stopping all undue discrimination by interstate carriers. It may be said without exaggeration that it is the paramount duty of interstate carriers, under this act to avoid discrimination. The penalties placed against any course of policy leading to such result are severe. There can be no justification for granting to one locality an advantage over another not arising out of difference in transportation conditions. The orders of a state commission enforcing a discrimination against interstate commerce are not acceptable under the law.

"Even though a power exerted by a state, when inherently considered, may not in and of itself abstractly impose a direct burden on interstate commerce, nevertheless such exertion of authority will be a direct burden on such commerce if the power as exercised operates a discrimination against that commerce, or, what is equivalent thereto, discriminates against the right to carry it on. (Mr. Chief Justice White, Pullman Company case, 216 U. S., 65.)

No state by the exercise of, or by the refusal to exercise, any or all of its powers may substantially discriminate or directly regulate interstate commerce or the right to carry it on. (Mr. Justice McKenna in Oklahoma v. Kansas Natural Gas Co., 221 U. S., 261.)

We come then to the question whether these acts are within the power of Congress under the commerce clause of the Constitution, considering that they are not confined to vehicles used in moving interstate traffic, but embrace vehicles used in moving intrastate straffic. The answer to this question depends upon another, which is, Is there a real or substantial relation or connection between what is required by these acts in respect of vehicles used in moving intrastate traffic and the object which the acts obviously are designed to attain, namely, the safety of interstate commerce and of those who are employed in its movement? Or, stating it in another way: Is there such a close or direct relation or connection between the two classes of traffic, when moving over the same railroad, as to make it certain that the safety of the interstate traffic and of those who are employed in its movement will be promoted in a real or substantial sense by applying the requirements of
48 these acts to vehicles used in moving the traffic which is intrastate as well as to those used in moving that which is interstate. If the answer to this question, as doubly stated, be in the affirmative, then the principal question must be answered in the same way. And this is so, not because Congress possesses any power to regulate intrastate commerce as such, but because its power to regulate interstate commerce is plenary and competently may be exerted to secure the safety of the persons and property transported therein and of those who are employed in such transportation, no matter what may be the source of the dangers which threaten it. That is to say, it is no objection to such an exertion of this power that the dangers intended to be avoided arise, in whole or in part,

out of matters connected with intrastate commerce. (Mr. Justice Van Devanter, Safety Appliances case, 222 U. S., 20, 26.)"

If a state by the exercise of its lawful power establishes rates which the interstate carrier makes effective upon state traffic, such carrier does so with the full knowledge that the federal government requires it to apply such rates under like conditions upon interstate traffic.

Language of the Act.

It is further said that the carriers within the state of Texas are protected from the provisions of the act to regulate commerce by that clause in its first section, reading:

"Provided, however, That the provisions of this act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property wholly within one state and not shipped to or from a foreign country from or to any state or territory as aforesaid."

This language was intended as a recognition of the fact that Congress by this act was not assuming to regulate transportation entirely within the borders of a state. It does not by the broadest construction justify the inference that an interstate carrier may pursue a policy of rate making within a state that would affect unlawfully commerce among the states. The phrase "among the several states," as recently defined by Mr. Justice Van Devanter with nice precision, "marks the distinction for the purpose of governmental regulation between commerce which concerns two or more states and commerce which is confined to a single state and does not affect other states, the power to regulate the former being conferred upon Congress and the regulation of the latter remaining with the states severally." Mondou v. N. Y., N. H. & H. R. R. Co., 223 U. S., 1, decided January 15, 1912. It is not merely the
49 commerce which is confined to a single state which is state commerce, but that which "does not affect other states." The state goes untouched as to its railroad policies so long as they do not trench upon the interstate field. Congress does not say that state rates shall be reasonable or that rebates upon state traffic shall be unlawful or that discrimination between localities within the state shall not be allowed. To reach these matters, so far as they do not affect interstate commerce, is the prerogative of the state, which is recognized and protected by the language of the act quoted.

But, as to the nation, Congress has prohibited carriers of interstate commerce from giving undue preference or advantage to one community over another. To say that this prohibition permits such carriers to exclude a city within the state of Louisiana from doing business upon equal terms with the cities in Texas is to distort the plain meaning of the act and make the regulation of interstate commerce farcically ineffective. To say that interstate carriers may so discriminate because of the orders of a state commission is to admit that a state may limit and prescribe the flow of commerce between the states.

And if one state may exercise its power of fixing rates so as to

prefer its own communities all states may do so. There would thus arise a commercial condition more absurd and unbearable than that which obtained prior to the constitution when each state sought to devise methods by which its commerce could be localized. How utterly incongruous the result if the interstate carriers of Ohio should be allowed to make rates within that state which would so confine the commerce of its communities as to exclude on equal terms that of Buffalo or of Pittsburg; and what national system of regulation could there be if interstate commerce could be discriminated against after such fashion? Manifestly Congress has dealt with the railroads of the country as servants of a national commerce and has accordingly laid down the rule of fair play to which they must conform.

Congress passed this act with full knowledge and profound appreciation of those decisions of the Supreme Court in which it had been held that state commerce was that wholly within a state "and not affecting interstate commerce," as is fully shown by the Cullom report of 1886 out of which grew the act to regulate commerce. "While the decisions of the United States Supreme Court," says this report, "may not perhaps afford as conclusive an answer to this question (What is interstate commerce?) as to the preceding one, we believe they indicate very clearly what the view of that
50 tribunal will be when it is called upon to more closely draw the line between that commerce which is wholly subject to state authority and that which is exclusively under the jurisdiction of Congress."

The report quotes this language from Gibbons v. Ogden:

"It is not intended to say that these words comprehend that commerce which is completely internal, which is carried on between man and man in a state, or between different parts of the same state, and which does *not extend to or affect other states.* (The italics are those of the report.) * * * But in regulating commerce with foreign nations the power of Congress *does not stop* at the *jurisdictional lines* of the several states. It would be a *very useless power* if it could not *pass those lines.* * * * If Congress has the power to regulate it, that power must be exercised *wherever the subject exists.* If it exists within the states, if a foreign voyage may commence or terminate at a port within a state, then the power of Congress may be exercised within a state. *This principle is, if possible, still more clear when applied to commerce 'among the several states.'* * * * The power of Congress, then, whatever it may be, must be exercised *within the territorial jurisdiction* of the several states.

After quoting other decisions, the report continues:

"There has been some dispute as to the extent to which the states may go in imposing regulations upon the instrumentalities of commerce which may *indirectly* affect interstate commerce until Congress sees fit to prescribe a uniform plan of regulation."

Then is cited with approval language from the decision in Hall v. DeCuir, 95 U. S., 485, which involved an act of the state of Louisiana prohibiting discrimination by common carriers of passengers between persons of different race or color.

"The act was declared to be an interference with interstate commerce, even if construed to be limited to that part of the carriage within the state. Upon this point the court said: 'While it purports only to control the carrier when engaged within the state, it must necessarily influence his conduct to some extent in the management of his business throughout his entire voyage. His disposition of passengers taken up and put down within the state, or taken up to be carried without, can not but affect in a greater or less degree those taken up without and brought within, and sometimes those taken up and put down without. * * * It was to meet such just a case that the commercial clause in the constitution was adopted."

Again the report quotes from Brown v. Houston, 114 U. S., 622.

51

"In short, it may be laid down as the settled doctrine of this court at this day that a state can no more regulate or impede commerce among the several states than it can regulate or impede commerce with foreign nations."

The committee comes to certain conclusions which it says have been conclusively established from the decisions to which reference has been made. Among these conclusions is this:

"Commerce among the states includes the transportation of persons and property from a place in one state to a place in another state. Interstate Commerce is all commerce that concerns more states than one, and embraces all transportation which begins in one state and ends in or passes through another state."

In presenting the act to regulate commerce to the Senate the Cullom Committee said:

"The provisions of the bill are based upon theory that the paramount evil chargeable against the operation of the transportation system of the United States as now conducted is unjust discrimination between persons, places, commodities, or particular descriptions of traffic. The underlying purpose and aim of the measure is the prevention of these discriminations, both by declaring them unlawful and adding to the remedies now available for securing redress and enforcing punishment, and also by requiring the greatest practicable degree of publicity as to the rates, financial operations, and methods of management of the carriers."

In view of this internal evidence that Congress was not only officially aware, but that its attention had been directly called to those decisions of the Supreme Court touching upon the boundary line between federal and state control, it certainly may not be truthfully said that Congress intended that its own act should be set at naught by an interstate carrier upon the ground that the discrimination effected against interstate commerce arose out of the rates and practices in effect on commerce wholly within a state.

An interstate carrier must respect the federal law, and if it is also subject to state law it must respect that in so far as it can without doing violence to its obligations under the national authority. Before us are carriers which undeniably discriminate directly against interstate traffic. To this charge they plead that all they have done was to obey the orders of a state commission, as against which they

were helpless. They appealed to no court for relief, nor to
52 this Commission. When the state of Louisiana after years of endurance makes complaint to this body these carriers make no showing of the reasonableness of their rates other than that heretofore dealt with—traffic adjustment equalizing gateways—and even in this defense all the carriers do not join. The class rates of the Texas commission within the distances here involved are not too low. This the carriers themselves do not urge. Yet they have maintained higher rates from Shreveport, the interstate point. While the Texas commission has evidenced a policy of home protection for its own state cities, there is every evidence that the carriers moving into and within Texas accepted this policy as their own, claiming that not to have adopted it would have led to reprisal on the part of the state authorities. Such conditions may not continue under this act. The interstate carrier which adopts a policy, even under state direction, that makes against the interstate movement of commerce must do so with its eyes open and fully conscious of its responsibilities to the federal law which guards commerce "among the states" against discrimination.

It is suggested that the exercise of such power to end discrimination between rates within a state and rates to interstate points must surely lead to a conflict in which the jurisdiction of one sovereignty or the other must give way. To this suggestion the one and sufficient answer is that when conditions arise which in the fulfillment of its obligation and the due exercise of its granted power to regulate commerce among the states make such course necessary the national government must assume its constitutional right to lead.

Conclusions.

We find:

(1) That the present class rates out of Shreveport to points in Texas on the Texas & Pacific Railway included in the following table, and to points in Texas on the Houston, East & West Texas Railway, are unjust and unreasonable.

(2) That just and reasonable class rates on these lines of railroad should not exceed the following:

53

On the Texas & Pacific Railway.

From Shreveport, La., to—	Distance. Miles.	Class rates in cents per 100 pounds.									
		1	2	3	4	5	A	B	C	D	E
Waskom, Tex	22.7	18	16	14	12	10	11	9	7	6	5
Jonesville, Tex	26.0	19	17	15	13	11	12	10	8	7	6
Scottsville, Tex	34.1	22	20	18	16	14	15	13	10	8	7
Marshall, Tex	42.0	24	22	20	18	16	17	14	11	9	7
Hallsville, Tex	55.2	29	27	25	23	19	20	17	14	12	9
Longview, Tex	65.7	32	29	27	25	20	21	18	15	13	10
Willow Springs, Tex	69.1	34	31	29	27	21	22	19	16	13	10
Camps, Tex	72.6	35	32	30	28	22	23	20	17	14	11
Gladewater, Tex	78.2	37	34	32	30	23	24	21	18	14	11
Big Sandy, Tex	88.3	40	37	35	32	24	25	22	19	15	12
Hawkins, Tex	94.0	42	39	36	33	25	26	23	20	16	13
Crow, Tex	100.5	44	41	38	35	26	27	24	21	16	13
Mineola, Tex	111.5	48	45	41	39	28	29	26	23	17	14
Grand Saline, Tex	124.6	52	48	44	42	30	31	28	25	18	15
Edgewood, Tex	135.1	54	50	45	43	31	32	29	26	19	16
Wills Point, Tex	142.3	56	52	47	45	32	33	30	26	19	16
Elmo, Tex	151.4	58	54	49	47	33	34	31	27	19	16
Terrell, Tex	157.9	60	56	51	49	34	35	32	28	20	16
Lawrence, Tex	161.9	61	56	51	49	35	36	33	28	20	16
Forney, Tex	169.4	63	58	52	50	36	37	34	29	20	16
Mesquite, Tex	177.6	65	60	54	52	37	38	35	29	21	16
Orphans Home, Tex	182.3	66	61	55	53	37	38	35	30	21	16

On the Houston, East & West Texas Railway.

From Shreveport, La., to—	Distance. Miles.	Class rates in cents per 100 pounds.									
		1	2	3	4	5	A	B	C	D	E
Joaquin, Tex	42.8	25	23	21	19	17	18	15	12	10	8
Teneha, Tex	54.3	29	27	25	23	19	20	17	14	12	9
Timpson, Tex	63.9	32	29	27	25	20	21	18	15	13	10
Garrison, Tex	72.3	35	32	30	28	22	23	20	17	14	11
Appleby, Tex	83.3	38	35	33	30	23	24	21	18	14	11
Nacogdoches, Tex	92.4	41	38	35	32	25	26	23	20	16	13
Angelina, Tex	104.3	45	42	39	36	27	28	25	22	17	14
Lufkin, Tex	112.5	48	45	41	39	28	29	26	23	17	14
Renova, Tex	127.6	52	48	44	42	30	31	28	25	18	15
Corrigan, Tex	137.7	55	51	46	44	32	33	30	26	19	16
Moscow, Tex	143.2	56	52	47	45	32	33	30	26	19	16
Valda, Tex	147.0	57	53	48	46	33	34	31	27	19	16
Leggett, Tex	151.0	58	54	49	47	33	34	31	27	19	16
Livingston, Tex	159.2	60	56	51	49	34	35	32	28	20	16
Goodrich, Tex	167.3	62	57	51	49	35	36	33	28	20	16
Shepherd, Tex	175.4	64	59	53	51	36	37	34	29	21	16
Cleveland, Tex	187.5	67	62	56	54	38	39	36	30	21	16
Midline, Tex	194.2	69	64	58	56	39	40	37	31	22	17
New Caney, Tex	203.4	71	65	58	56	40	41	37	31	22	17
Pauli, Tex	208.8	72	66	59	57	40	41	38	32	22	17
Humble, Tex	213.6	73	67	59	57	41	42	38	32	22	17
Houston, Tex	230.7	77	70	60	58	43	44	39	33	23	17

(3) That such carriers maintain higher rates from Shreveport to points in Texas than are maintained from cities within Texas to such points under substantially similar conditions and
54 circumstances.

(4) That thereby an unlawful and undue preference and advantage is given to such Texas cities, and a discrimination that is undue and unlawful is effected against Shreveport.

(5) That an order should be issued directing said carriers to establish and maintain rates no higher than those above found to be reasonable out of Shreveport to the Texas points named under western classification.

(6) That the Texas & Pacific Railway Company shall cease and desist from charging higher rates upon any commodity from Shreveport into Texas than are contemporaneously charged for the carriage of such commodity from Dallas toward Shreveport for an equal distance.

(7) That the Houston & Shreveport Railroad Company and the Houston, East & West Texas Railway Company shall cease and desist from charging higher rates upon any commodity from Shreveport into Texas than are contemporaneously charged for the carriage of such commodity from Houston toward Shreveport for an equal distance.

It will be the duty of the carriers under such order to duly and justly equalize the terms and conditions upon which they will extend transportation to traffic of a similar character moving into Texas from Shreveport with that moving wholly within Texas. But in effecting such equalization the class scale rates prescribed above shall not be exceeded.

As to the matter of the concentration of Texas cotton at Shreveport specifically dealt with in the complaint we find the carriers pursuing a policy with respect to Texas cotton within Texas which they do not apply to Shreveport. This discrimination is likewise disapproved. Whatever is the practice pursued respecting the concentration of cotton within Texas the carrier shall be ordered to apply at Shreveport, provided the practice adopted shall be one justifiable under the act to regulate commerce and applicable fairly under like conditions elsewhere on the lines of the carriers.

PROUTY, Chairman concurring:

I entirely agree with the conclusion reached in the majority opinion and can add nothing to the argument as there stated. I do, however, wish to refer to one or two of the previous decisions of this Commission as illustrative of my views on this general subject.

This question came before the Commission in much its present form in Reliance Textile & Dye Works v. Ry. Co., 13 I. C. C., 48. In that proceeding the complaint contended that rates from the mills to its dye works, combined with rates from its dye
55 works to points of consumption, were unduly high as compared with similar rates made to and from the dye works of its competitors. One of the rates complained of was that from

certain mills in South Carolina to Augusta. Since this was a state rate and under the jurisdiction of the state commission, the defendants insisted that this Commission could not predicate discrimination on a comparison between this rate and the interstate rate to the factory of the complainant. To this contention the Commission refused to assent, saying:

"To this we can not agree. The same lines participate in all these rates from the mill to the dye works of the complainant and its competitor and from these in turn to the points of consumption. When a discrimination, forbidden by the act to regulate commerce, arises from an adjustment of state and interstate rates, carriers subject to our jurisdiction and participating in the interstate rates can not escape responsibility by claiming that the discrimination is accomplished through a reduction of the state rate so long as that reduction is voluntary. They were answerable for the effect produced by the combination of rates, all of which they control.

* * * * * * *

This must certainly be so where the state rate is voluntarily made, and we think that the same conclusion must finally be reached where the state rate is made by state authority. A state can no more improperly prefer an industry within its borders as against an industry located without by the imposition of an improper freight rate than the Southern Railway can unduly prefer that industry in its own interest."

In that proceeding the Commission failed to find the fact of discrimination, and no order was therefore required.

In Saunders v. Southern Express Co., 18 I. C. C., 415, fish rates from Mobile as compared with those from Pensacola to certain points in the state of Alabama were before us. The Southern Express Company had originally established voluntary rates, thereby creating a relation in transportation charge between the Mobile and Pensacola fish markets to interior points of consumption. The railroad commission of Alabama had established a mileage scale of express charges for the transportation of fish and some other commodities, and the application of this scale had the effect to reduce rates materially from Mobile, whereupon Pensacola complained of the discrimination.

56 There was no claim of any intent to prefer Mobile to Pensacola; the rates in question were those of the Alabama commission applicable over all lines. To hold that those rates were unduly low would be of necessity to hold that the Alabama schedule as a whole was unduly low, and there was no evidence upon which we could properly do that. Upon the other hand, it did not seem clear that the rates from Pensacola were unduly high, or certainly that rates as low as those prescribed by the Alabama commission, if applied from Pensacola, might not be unduly low.

If we made an order requiring the defendant to remove the discrimination this must apparently result in a reduction in the Pensacola rates, and I did not feel that upon the then state of the record we were justified in requiring that reduction. It was said

that the reasonableness of the rates was being contested before the Alabama commission and the course actually adopted by us was to retain the complaint upon our docket where it might be made the subject of further investigation.

The Commission might in that case have found that the circumstances of the transportation from Pensacola were the same as from Mobile and might upon that finding have ordered the carriers to remove the discrimination by putting into effect the same rates from these two points, but to comply with his order the carrier must either have reduced its Pensacola rate or have assumed the burden of showing that the Mobile rate established by the Alabama commission was unduly low. It did not seem to me just to cast this onus upon the carrier until we had gone far enough in our investigation to be willing to say ourselves how the discrimination should be corrected.

I call attention to this case because I am still of that same opinion. While this Commission can not establish and should not attempt to establish, directly or indirectly, a state rate, it must in the exercise of the duty put upon it by the act to regulate commerce determine whether the discrimination exists, and in doing that it may and should examine the state rate in comparison with the interstate rate.

In Andy's Ridge Coal Co. v. S. Ry. Co., 18 I. C. C., 405, the question was presented from a somewhat different angle. The complainant was a shipper of coal from the Coal Creek field in Tennessee to Nashville, Tenn., and its complaint was that the rate made by the defendant from its mine to Nashville was too high in comparison with the rate made by the same defendant from
57 certain points in Virginia to Nashville. In preparing the report it was my own first impression that the Commission should order the defendants to desist from this discrimination, and the facts were stated in that view, but upon consideration the Commission was unanimously of the opinion that in that case we had no jurisdiction, for the reason that the rate used by the complainant was a state rate, and that the burden, therefore, was not upon interstate but rather upon state commerce.

Upon further reflection I think that this case was wrongly decided and should be overruled. The state rate is one blade and the interstate the other of these shears, and it is impossible to say which one does the cutting. In my opinion whenever an interstate carrier creates a discrimination by the maintenance of an interstate as compared with a state rate the application for relief must, of necessity, be directed to this Commission, whether the applicant desires to use the state or the interstate service.

The first section of our act provides that it shall not "apply to the transportation of passengers or property wholly within one state," and it is said that we are thereby debarred from dealing with this situation since, as can not be denied, we affect the state rate. But our order is not directed against the state rate and does not of necessity "apply" to it, because it indirectly controls that rate. If this be not so then the converse must all the more be true and no

state commission can establish a rate which directly or indirectly affects an interstate rate, which is not in my opinion the law.

It is well settled that there is a broad field within which the state may act in the regulation of its transportation facilities until the federal government has exercised its authority under the commerce clause. A state can not apply its rate of transportation to that portion of an interstate movement which takes place within the territorial limits of a state, because the entire movement has been placed under the jurisdiction of the federal government and that jurisdiction is exclusive; but the state may, I think, establish the rate of transportation from point to point within its limits, although the effect of this is to indirectly require a change in interstate rates upon which Congress has not acted. When the federal authority does act, then the state can not by its action interfere, for in case of actual conflict the state must yield, but the mere enactment of the act to regulate commerce is not a federal declaration that the interstate rates voluntarily established by carriers which have not been passed upon by the Interstate Commerce Commission are reasonable.

58 Our third section declares that no carrier subject to the act shall be guilty of undue preference and lays upon this Commission the duty of removing such preference when found to exist. It is no valid reason against the exercise of that authority that as a result some state rate must be changed.

Such an authority must manifestly be exercised by some one, nor is its exercise antagonistic to the interest of state shippers. It is significant that the complainant in the Andy's Ridge case was petitioning the Commission to secure him the enjoyment of a state rate, which could only be done by federal authority.

CLARK, *Commissioner*, concurring:

In indicating my assent to the conclusions reached in this case I shall not undertake to discuss the important and far-reaching questions of law that are involved and upon which, as is evidenced by the several attitudes of my colleagues, wide differences of opinion are entertained.

Under the constitution a state may not levy any tax or impost upon commerce from another state. A transportation rate that has been prescribed by, or that is subject to regulation by, a body created by law for that purpose is in essence a tax or impost upon traffic. Here we have one state demanding that the tax upon its traffic shall not be assessed in such manner as to unjustly discriminate against its citizens by or as a result of action of another state, and an adjoining state insisting upon levying the taxes upon commerce in such manner and measure as to give a monopoly of the traffic here considered to the dealers and commercial centers of that state. It may be suggested that this action is not interference with, and does not impede the free flow of, commerce between the states; that it is simply inviting it to move through one channel or gateway instead of another. These rates, however, do not apply to through

movement of the traffic from the points at which it is produced or manufactured to final points of consumption, but apply to the redistribution of such traffic after it has been laid down at distributing centers. A state may not obstruct a navigable waterway without the consent of the federal government, and it is no answer to say that it has opened another stream or channel in lieu of the one so obstructed.

Whether or not the Congress has exercised its jurisdiction in these premises and whether or not it has delegated to us power to remove such discriminations and preferences are questions which apparently can never be settled until they have been passed upon by the
59 court that is empowered to speak the last word. In this question as between two states possessing equal rights under the constitution and equal rights to federal protection, discrimination that is unjust or preference that is undue should, I think, be abated by federal authority, and so long as there is doubt it should be resolved in favor of that course which is harmonious with the fundamental and recognized purpose of the act to regulate commerce.

CLEMENTS, *Commissioner*, dissenting:

The act to regulate commerce at once confers and specifically limits the powers of the Commission intended by Congress to be exercised by it for the correction of wrongs against which the act was aimed.

The question of authority here presented is not that of the Congress, under the constitution, but that of this Commission, under the statute; it is not what additional powers Congress could or ought to vest in the Commission, but, Has it conferred the power here sought to be exercised?

It is conceded that the effect of the order entered in this case is to control the rates on traffic moving from Dallas, Tex., to points of destination in that state. If the power here asserted exists in this Commission then every state rate can be controlled by it. All that is needed to effect this control is for the Commission, either upon complaint made or in a proceeding instituted by it, to fix the maximum rates from a point outside the state for interstate transportation to a point in the given state on the line of an interstate carrier subject to the act, and then fix what it may determine to be the just relation of rates between that particular point of destination and all other points on the same line.

Section 1 of the act contains the following provision:

"That the provisions of this act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property wholly within one state and not shipped to or from a foreign country from or to any state or territory * * *."

Every other section of the act must be read and considered in the light of this limitation, and regard must be had to the substan-

tial effect of our orders and to the recognized rule of law that what is forbidden to be done directly may not be effected indirectly.

The manifest theory of the statute is that there is a distinct field for separate and independent state regulation, and another for federal regulation of transportation rates. It is for this Com-
60 mission to exercise only the authority conferred upon it, and when a condition arises presenting wrongs which can not be corrected without additional authority, to submit the situation to Congress, as provided in the act, for consideration of additional legislation which may commend itself to them. Section 3 of the act, condemning discrimination between places as well as persons and different descriptions of traffic, can not be read independently of this restrictive proviso of section 1.

The principles involved in the line of demarcation between state and federal control of commerce, especially with respect to transportation, are of profound importance, and however comprehensive may be the authority of Congress, this Commission is not justified, in my judgment, in undertaking, by interpretation, to read out of the act an important provision, in order to meet a situation which has developed and which, as I view it, can only be reached by additional legislation.

In so far as the administration of complete justice may be defeated by independent state action, it might be the view of Congress that such result had better be borne than to adopt legislation which practically extinguishes state authority, not only in respect to rates for intrastate transportation, but to many other matters involved in the regulations and practices of carriers wherein questions of discrimination may arise.

It will be noted that the judicial utterances quoted by the majority in this case are not confined to the granting of authority by Congress to the Commission, but relate largely to the broader field of the authority of Congress itself, under the constitution.

The conclusion and order of the Commission in this case mark a new departure, in the interpretation of the statute as to the scope of its authority, from its steadfast attitude toward this fundamental question in all previous cases.

HARLAN, *Commissioner*, dissenting:

While the majority report ascribes to the Texas commission the definite policy and purpose of so adjusting the state rates out of Dallas as to make it the jobbing point for eastern Texas, to the prejudice of Shreveport, the principle underlying the ruling would also control when a state commission, without any such motive but in the normal exercise of its functions, has fixed a scale of rates for purely state traffic with an unfavorable effect on some community in an adjoining state, served by the same carrier to the same destinations. The result of the ruling when analyzed, therefore,
61 seems to be that in fixing a rate on the interstate traffic of a carrier we thereby impose on it and upon the lawfully constituted state authorities a standard to which both must adjust their

views as to what is a reasonable rate on its purely state traffic. No room is left to the state commission for the exercise of its discretion when fixing a carrier's state rates to destinations to which its interstate rates also run; the only duty it may perform is carefully to ascertain and follow the measure of reasonableness fixed by this Commission for the carrier's interstate rates to those destinations.

Harmony in a carrier's charges is always desirable, and it is doubtless true that complications occasionally arise out of the differences in the rates respectively established by the state and interstate commissions on state and interstate traffic. In some way such situations should be regulated. But the exercise by this Commission of a power that so modifies the control of state commissions over state rates and requires a carrier either to put itself in an attitude of disobedience to an order of a state commission respecting its state traffic or to accept less than a reasonable compensation on its interstate traffic, manifestly ought to rest upon some clear and definite declaration of that policy of the Congress. It rests on an insecure and wholly unsatisfactory foundation for administrative purposes when it flows from a process of reasoning that is admittedly mere construction. This is particularly true when it is announced by a quasi-judicial tribunal that has no general jurisdiction but only such special and limited powers as are defined in the act creating it.

The significance of the ruling is emphasized by the fact that it reverses what has been the settled interpretation of the act by this Commission from its inception. In numerous reported cases we have disclaimed the power now asserted and have expressly construed the proviso of section 1 as excluding the right to control such a situation as is here presented. The Congress must be presumed to have known of these decisions and to have accepted that view as the national policy declared by the statute, for in repeatedly amending the act in other respects it has made no change in that regard.

I concur in general in the views expressed in the dissenting reports of Mr. Commissioner Clements and Mr. Commissioner McChord. It is therefore unnecessary to enter upon any extended discussion of my own, particularly in view of the fact that as the author of the report of the Commission in Saunders v. Southern Express Co., 18 I. C. C., 415, which presented the precise question in an even more direct form, I had occasion carefully to consider the extent of our powers in such a situation and to express my views at some length. State traffic as a thing in itself to be regulated under the authority of law has been reserved under the constitution to the several states. The power of the federal government to fix maximum rates on state traffic, even when conducted by an interstate carrier, is therefore a matter of no small doubt. Its power to fix minimum rates on state traffic conducted by an interstate carrier, on the general theory that such traffic ought to contribute ratably to the cost of operating a vehicle of interstate commerce in order not to become a burden upon such commerce, seems to me to be more clear. On the same general theory I think that the Congress in aid, or rather in protection, of interstate commerce may forbid

62

discriminations by a railroad or other instrument of interstate traffic in favor of state traffic. This, however, it has not yet undertaken to do. In my judgment the language of the proviso of section 1 admits of no other reasonable construction than that the Congress intended expressly to withhold from this Commission the right, directly or indirectly, to exercise its powers with respect to state commerce or to enforce upon such traffic any of the provisions of the act.

McCHORD, *Commissioner*, dissenting:

In dissenting from the opinion of the majority, it is not my purpose to discuss the relative powers of the state and national governments, for that would presuppose a conflict between federal and state authority, which conflict I do not concede here exists. Neither is it my purpose to argue the extent of the powers of the Congress under the constitution, but rather to confine myself to the powers which the Congress has delegated to this Commission.

The report says complainants have asked this Commission to "establish the same basis of rates of transportation between Shreveport and east Texas points as are accorded by defendants to Texas competitors of Shreveport interests in the same line of business for the same distances." It continues: "With this petition we can not comply unless such power has been granted under the first, third, and fifteenth sections of the act to regulate commerce." The first section provides that the rates charged by carriers for interstate transportation must be reasonable, and prohibits and declares to be unlawful all charges which are unreasonable. The third section prohibits the giving of undue or unreasonable preference or advantage to any person, locality, or particular description of traffic, or the subjection of any person, locality, or particular description of
63 traffic to undue or unreasonable prejudice or disadvantage. Section 15 authorizes the Commission to determine and prescribe just and reasonable rates when, after full hearing upon complaint, it shall be of opinion that the existing rates are unjust or unreasonable or unjustly discriminatory or unduly preferential or prejudicial. Under the majority opinion, therefore, resort must be had to all of the enumerated powers in order to grant the relief prayed for.

The report finds that the rates out of Shreveport, La., into eastern Texas discriminate against Shreveport in favor of Texas jobbers. Without now discussing whether or not an interstate carrier may unduly favor its intrastate traffic, let us consider the situation without regard to the state line. Conceding, for the purpose of argument, that the rates from Dallas to eastern Texas discriminate in favor of Dallas as compared with the rates from Shreveport into eastern Texas, the first question that arises is: Is the discrimination voluntary? In all the reports of this Commission dealing with the question of discrimination we have invariably inquired into the reason for the discrimination to determine whether or not the same was undue, and where we have found the situation to be one over which

the carrier defendant has no control we have held that the carrier was not responsible for the discrimination. Section 4 of the act does nothing more than define a particular form of discrimination, and, from the operation of this carriers have been relieved when the discrimination, i. e., the lower rate to the farther distant point, was brought about by circumstances beyond its control. In some instances these circumstances were water competition; in others market competition, while again, it was carrier competition. The principle underlying our action in all such cases is that the carrier is not responsible for a discrimination occurring because of circumstances over which it has no control. As was said by Mr. Chief Justice White in East Tenn., Va. & Ga. Ry. Co. v. I. C. C., 181 U. S., 1:

"The prohibition of section 3, when that section is considered in its proper relation, is directed against unjust discrimination or undue preference arising from the voluntary and wrongful act of the carriers complained of as having given undue preference, and does not relate to acts the result of conditions wholly beyond the control of the carriers."

In the instances where we have found the lower rate to the farther distant point or the lower rate to the preferred point to have been reasonable, and therefore have used it to measure the reason-
64 ableness of the rate to the point not favored, we have frequently found the latter rate unreasonable and ordered its reduction, but this action was based on section 1 after the complaint under section 3 or 4 had been dismissed. In the present case the rates from Dallas to eastern Texas points are prescribed by the body lawfully constituted and duly empowered so to do—the railroad commission of Texas. If the application of these rates results in a preference to Dallas as compared with Shreveport, then the fact that the intrastate rates were established, not by the voluntary action of the carriers, but under circumstances by which they were controlled, we must find that the discrimination, so far as the carrier is concerned is not undue. In considering, a somewhat similar situation, where the Alabama railroad commission had established rates within the state of Alabama which resulted in alleged discrimination against Pensacola, Fla., the Commission in Saunders & Co. v. Southern Express Co., 18 I. C. C., 421, said:

"The relation of rates thus produced was neither voluntary nor the consequence of any uncontrolled action on its part; the continuation of the relation thus created is not in any sense attributable to the defendant unless it may be said that the defendant is under an obligation to correct the discrimination by voluntarily reducing its Pensacola rates to the basis of the Mobile rates."

This the Commission refused to do, chiefly because it considered that the application of the Alabama rates from Pensacola would not be reasonable to the defendant. By this very action the Commission dismissed the case under section 3 and proceeded to consider it under section 1.

In my opinion, therefore, the charging of lower rates to a common territory for intrastate than for interstate traffic, at least where the

intrastate rates are compelled, does not constitute undue discrimination. But suppose it did. Has this Commission power to correct it?

Section 3 declares it to be unlawful for any common carrier subject to the provisions of the act to unduly prefer any person, locality, or description of traffic, or to subject any person, locality, or description of traffic to undue or unreasonable prejudice or disadvantage. It is specifically provided in section 1, however, "that the provisions of this act shall not apply to the transportation of passengers or property or to the receiving, delivery, storage, or handling of property wholly within one state and not shipped to or from a foreign country from or to any state or territory as aforesaid." To
65 my mind, this excludes the application of section 3 where either the traffic favored or prejudiced lies wholly within one state. Based upon judicial expressions, intrastate commerce is said by the majority to be that commerce which not only is confined to a single state, but also "does not affect other states." The word "affect" renders the application of this phrase extremely uncertain. I do not hesitate to subscribe to the theory that where intrastate commerce or anything else places a direct burden and obstruction upon interstate commerce the obstruction can be removed. The power to regulate interstate commerce is by our constitution vested in the Congress. That body, under the commerce clause of the constitution, possesses numerous powers, only a few of which it has delegated to this Commission. In deputizing this Commission to correct unreasonable and discriminatory transportation charges and practices for the interstate transportation of passengers and property as defined by the act, Congress specifically excluded from our jurisdiction that transportation which lay wholly within one state. The phrase "wholly within one state" is qualified only by "and not shipped to or from a foreign country from or to any state or territory as aforesaid." Had it been the intention of Congress to make the provisions of the interstate-commerce act applicable to transportation wholly within one state which "affects other states," it doubtless would have further qualified the proviso in section 1. The majority report tells us that Congress was fully aware of the fine distinction between interstate and intrastate commerce as laid down by the courts. It is, therefore, but fair to assume that that body knew the significance of the phrase "does not affect other states." Whether or not the Congress was so advised is immaterial in the face of the specific exemption of all transportation wholly within one state. The Congress, and not this Commission, is vested with unqualified power "to regulate commerce with foreign nations and among the several states and with the Indian tribes." Some, but not all, of these powers have been delegated by the Congress to this Commission. If it be true that intrastate transportation of the kind here involved "affects" interstate commerce and is subject to the regulating power of the Congress, it is for that body, and not this, to do the legislating. Certainly, as the law now stands, this Commission can not grant relief under the third section, and the fact that the situation, so far as discrimination is concerned, is without remedy does not

give to us power which has specifically been withheld. As we look to the act of Congress rather than to the constitution for our
66 powers and duties, it is useless to discuss the constitutional power of Congress under the commerce clause. In my opinion, the majority report is in effect legislation which the Congress has expressly refused to enact.

But suppose that into the proviso of section one we read the phrase "which does not affect other states," and suppose further we concede that the Texas rates "affect" other states. A point may be affected either favorably or unfavorably. Where Shreveport is prejudiced and Dallas favored, it is the opinion of the majority that this Commission can order the discrimination removed. The converse, then, must be true, and upon complaint to this Commission that the rates between Texas points discriminate against Dallas as compared with Shreveport, a like order must be issued.

It is stated "to say that interstate carriers may so discriminate because of the orders of the state commission is to admit that the state may limit and prescribe the flow of commerce between the states." Suppose the discrimination were due to an order of this Commission fixing the Shreveport rate: To say that interstate carriers might discriminate because of such order would be an equal admission that this Commission might limit and prescribe the flow of commerce between points in a state. In response to the suggestion that the federal commerce power extended to all the affairs of a railroad if any part of its business was interstate, Mr. Chief Justice White, in Howard v. I. C. R. Co., 207 U. S., 463, said:

"It assumes that because one engages in interstate commerce, he thereby endows Congress with power not delegated to it by the Constitution; in other words, with the right to legislate concerning matters of purely state concern. * * * It is apparent that if the contention were well founded it would extend the power of Congress to every conceivable subject, however inherently local; would obliterate all the limitations of power imposed by the Constitution, and would destroy the authority of the states as to all conceivable matters, which from the beginning have been and must continue to be under their control as long as the Constitution endures.

It has been repeatedly held by the Supreme Court that the power of the state over intrastate commerce is as full and complete as is the power of Congress over interstate commerce. In Sands v. Manistee River Improvement Co., 123 U. S., 288, the court, by Mr. Justice Field, said:

"Internal commerce of a state—that is, the commerce which is wholly confined within its limits—is as much under its control as foreign or interstate commerce is under the control of the general government."

67 The majority points out the chaotic conditions that will result if its view be not accepted. It avers that it will then be within the power of the carriers or of the states to make rates within a state which will so confine the commerce of its communities as to exclude on equal terms other communities. The adoption of the constitution was an expression of the people's aim toward co-

ordination rather than conflict between the sovereignties in the discharge of their respective powers. If, as suggested, our dual plan of government has led to chaos rather than harmony in the regulation of commerce, surely the corrective power has not been lodged with this Commission; and if not vested in the Congress, the final remedy is to be found, as said in Taylor v. Beckham, 178 U. S., 580, "in the august tribunal of the people which is continually sitting." But I apprehend that such a remedy will not be invoked until it has been more clearly demonstrated than has been done by the majority report that such conflict is real and not the result of misconception both of law and of fact. The Congress is able completely to regulate interstate transportation without the exercise of any control over transportation which lies wholly within a state; so, also, is this Commission, by the proper exercise of the powers which have been conferred. If the alleged preferential intrastate rates are reasonable, and if the transportation conditions from the interstate point to the common territory are similar, it follows that the interstate rates must be too high and should be reduced. But this is not because of discrimination; rather because of inherent unreasonableness. In the determination of the reasonableness of interstate rates comparisons with other rates between points in the same territory or between points in another territory where transportation conditions are similar are extremely helpful, often persuasive, and on account of the high cost, claimed by the carriers and admitted by shippers, for conducting intrastate or local business, the reasonable intrastate rate under similar transportation conditions may safely be accepted for comparative purposes. If an unreasonably low intrastate rate be prescribed by a state commission, the order would not have to be obeyed. The situation may then resolve itself into a question of whether the intrastate rate is reasonable and whether the transportation conditions as to the intrastate and interstate traffic are similar.

Much of the opinion is devoted to a discussion of the supremacy of federal over state control. To my mind, a conclusion both erroneous and unnecessary is reached, and as it is unnecessary I would not further refer to it except for the great length with which
68 the matter has been dealt and my unwillingness to subscribe to the views therein announced. The quotation from the Pullman case, 216 U. S., 65, is unassailable, but it should be remembered that in that case the state of Kansas attempted to impose a tax upon all of the property, both interstate and intrastate, of the Pullman Company. The excerpt from Oklahoma v. Kansas Natural Gas Co., 221 U. S., 261, is quoted from Haskell v. Cowham, 187 Fed., 409, and was directed at the action of the state of Oklahoma in refusing to allow natural gas mined therein to be transported by pipe lines out of the state, a situation in no wise analogous to that here presented. The decision in the Safety Appliance case, 220 U. S., 27, has absolutely no application to the instant case. There it was in effect held that cars and locomotives are instrumentalities and vehicles of commerce moving over an interstate highway and that their proper and safe equipment was necessary to insure the transportation of interstate commerce.

The case of Gibbons v. Ogden, 9 Wheat., 1, dealt with the power of the state of New York to grant an exclusive charter to Fulton and Livingston to operate steamboats on its rivers. The principal contention in that case was that commerce on its rivers was subject to state control. The Supreme Court held otherwise, but said nothing that has a direct bearing upon the extension of federal control to intrastate rates in instances of the kind here involved.

The several quotations from the report of the Cullom committee are misleading if some notice be not taken of the situation existing at that time. Prior to the enactment of the law of 1887 Congress had made no attempt to regulate commerce among the states other than that by water. To-day, when we have the benefit of numerous judicial interpretations of the phrase "interstate commerce," it is surprising to note the varied opinions expressed by eminent lawyers before the committee which framed that report a quarter of a century ago. Many contended that transportation from a point in a state to a port of transshipment was subject to state control, while others placed under the jurisdiction of the state traffic carried between points in a state passing out of the state en route, and also contended that the state's control extended over the portion of any interstate transportation which lay within its domain. After discussing this situation the report continues: "It would seem that the only construction applicable under all the circumstances would be that which limits the authority of a state to that commerce which is wholly domestic or internal and gives to Congress exclusive control over the remainder."

69 The quotation from Gibbons v. Ogden would be more enlightening if it included the several preceding sentences, as follows: "The word 'among' means to intermingle with. A thing that is among others is intermingled with them. 'Commerce among the states' can not stop at the external boundary line of each state, but may be introduced into the interior." Both the majority opinion and the Cullom report omit the following from Gibbons v. Ogden:

"Comprehensive as the word 'among' is, it may very properly be restricted to that commerce which concerns more states than one. The phrase is not one which would probably have been selected to indicate the completely interior traffic of a state, because it is not an apt phrase for that purpose; and the enumeration of the particular classes of commerce to which the power was to be extended would not have been made had the intention been to extend the power to every description. The enumeration presupposes something not enumerated, and that something, if we regard the language or the subject of the sentence, must be the exclusively internal commerce of a state. The genius and character of the whole government seem to be, that its action is to be applied to all the external concerns of the nation, and to those internal concerns which affect the states generally, but not those which are completely within a particular state, which do not affect other states, and with which it is not necessary to interfere, for the purpose of executing some of the general powers of the government. The completely internal commerce of a state, then, may be considered as reserved for the state itself."

Further on the report quotes Judge Hammond in a case brought in the federal courts of Tennessee to test the validity of a statute enacted in that state for the regulation of railroads:

"The decisions amount, we think, only to this: Where a warehouseman or common carrier is engaged in the storage of goods or their carriage within a state, and exclusively within it, the rates of charges for such business are subject to legislative control by the state, and the fact that such legislation may indirectly and remotely affect commerce between the states does not invalidate it, because, if Congress has, by reason of this indirect and remote regulation of such local business to interstate commerce, any right to assert control over what is primarily domestic commerce, it is to be presumed, until Congress acts, that it does not intend to displace the right of the state to control its domestic commerce."

In Ames v. U. P. R. R. Co., 64 Fed., 171, Mr. Justice Brewer, sitting in circuit, said:

70 "Neither can I understand how the reduction of local rates, as a matter of law, interferes with interstate rates. It is true that the companies may, for their own convenience, to secure business, or for any other reason, rearrange their interstate rates and make them conform to the local rates prescribed by the state, but surely there is no legal compulsion. The statute of the state does not work a change in interstate rates any more than an act of Congress prescribing interstate rates would legally work a change in local rates."

To the suggestion that the exercise of the power to end discrimination between rates within a state and rates to interstate points must lead to conflict in which the jurisdiction of one sovereignty or the others must give way, the majority answers "that when conditions arise which, in the fulfillment of its obligations and the due exercise of its granted power to regulate commerce among the states make such course necessary, the national government must assume its constitutional right to lead." Let us see whether by the finding of the majority the national government really leads. The rates prescribed as maxima to apply from Shreveport are virtually the Texas commission rates that are in effect in Texas. Subject to these maxima, Shreveport is ordered kept on a parity with Houston and Dallas, leaving it then within the power of the Texas commission to further reduce the Shreveport rates by a reduction in the present Texas scale. The national government therefore leads by following the judgment of the state government, to whom it says: "We will adopt not only your present scale of rates, but any lower scale you may see fit to establish. Your judgment has been the standard by which we have measured and fixed the maximum rates from Shreveport. If you desire to make lower rates from Shreveport into Texas you may do so by lowering the Texas scale." Of course, if in this instance we fix interstate rates by the Texas yardstick, we must fix other interstate rates by other state yardsticks, and may find ourselves incumbered with some forty-eight different rate meters, which will doubtless create a condition "more absurd and unbearable" than that which the majority opines would arise if the states remain unmolested in the exercise of their legitimate powers. But, aside

from this chaos, the Supreme Court has said that the function which the majority would delegate to the state of Texas can not by a state be constitutionally exercised, because:

"The fact which vitiates the provision is that it compels the carrier to regulate, adjust, or fix his interstate rates with some reference at least to his rates within the state. (L. & N. R. R. Co. v. Eubank, 184 U. S., 41.)"

71 To prevent the conflict between sovereignties which the majority has unnecessarily and by no means conclusively discovered and attempted to remove, the Congress has wisely declared:

"That the provisions of this act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property wholly within one state and not shipped to or from a foreign country from or to any state or territory as aforesaid."

The majority endeavors to interpret this provision by explaining what it does not mean, but I submit that if it were not intended to cover instances of the kind with which we are here dealing its incorporation in the act to regulate commerce was wanton and unnecessary.

My position is that this Commission should confine itself within the four corners of the law of its creation, usurping neither the legislative function of the Congress nor the judicial power of the courts.

72 *Appendix.*

EXHIBIT 1.

Class Rates Dallas, Tex., to Points on the Texas & Pacific Ry.

Station.	Distance.	Class. 1	2	3	4	5	A	B	C	D	E
	Miles.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.
Orphans Home	7.4	13	12	10	8	6	7	6	5	5	4
Mesquite	12.1	15	13	12	10	7	8	6	5	5	4
Forney	20.3	17	15	13	11	9	10	8	6	6	5
Lawrence	27.8	20	18	16	14	12	13	11	9	7	6
Terrell	31.8	21	19	17	15	13	14	12	10	8	6
Elmo	38.3	23	21	19	17	15	16	14	11	9	7
Wills Point	47.4	26	24	22	20	17	18	15	12	10	8
Edgewood	54.6	29	27	25	23	19	20	17	14	12	9
Grand Saline	65.1	32	29	27	25	20	21	18	15	13	10
Mineola	78.2	37	34	32	30	23	24	21	18	14	11
Crow	89.2	40	37	35	32	24	25	22	19	15	12
Hawkins	95.7	42	39	36	33	25	26	23	20	16	13
Big Sandy	101.4	44	41	38	35	26	27	24	21	16	13
Gladewater	111.5	48	45	41	39	28	29	26	23	17	14
Camps	117.1	50	47	43	41	29	30	27	24	18	15
Willow Springs	120.6	51	47	43	41	30	31	28	25	18	15
Longview	124.0	51	47	43	41	30	31	28	25	18	15
Hallsville	134.0	54	50	45	43	31	32	29	26	19	16

Marshall	147.9	57	53	48	46	33	34	31	27	19	16
Scottsville	155.6	59	55	50	48	34	35	32	27	20	16
Jonesville	163.7	61	56	51	49	35	36	33	28	20	16
Waskom	167.0	62	57	51	49	35	36	33	28	20	16
Greenwood	172.5	101	84	74	71	54	58	51	40	28	21
Shreveport	189.7	101	84	74	71	54	58	51	40	28	21

Class Rates Shreveport, La., to Points on the Texas & Pacific Ry.

Station.	Distance.	Class. 1	2	3	4	5	A	B	C	D	E
	Miles.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.
Waskom	22.7	39	27	23	23	23	23	22	17	13	9
Jonesville	26.0	40	28	24	24	24	24	23	17	14	9
Scottsville	34.1	43	30	26	26	26	26	24	18	14	9
Marshall	42.0	56	42	35	33	30	33	30	23	19	13
Hallsville	55.2	60	46	40	35	30	35	30	25	21	15
Longview	65.7	60	49	40	35	30	35	30	25	21	17
Willow Springs	69.1	85	71	55	47	44	47	41	36	25	18
Camps	72.6	85	71	55	47	44	47	41	36	25	18
Gladewater	78.2	85	71	59	50	48	50	45	36	25	18
Big Sandy	88.3	85	71	64	50	49	50	46	36	25	18
Hawkins	94.0	85	72	66	53	49	53	46	36	25	18
Crow	100.5	95	84	67	55	49	53	46	36	25	18
Mineola	111.5	79	64	58	55	47	48	44	36	25	18
Grand Saline	124.6	98	84	67	60	49	53	46	36	25	18
Edgewood	135.1	98	84	67	60	49	53	46	36	25	18
Wills Point	142.3	98	84	67	60	49	53	46	36	25	18
Elmo	151.4	105	92	74	71	54	58	51	40	28	21
Terrell	157.9	105	92	74	71	54	58	51	40	28	21
Lawrence	161.9	105	92	74	71	54	58	51	40	28	21
Forney	169.4	105	92	74	71	54	58	51	40	28	21
Mesquite	177.6	105	92	74	71	54	58	51	40	28	21
Orphans Home	182.3	105	92	74	71	54	58	51	40	28	21
Dallas	189.7	101	84	74	71	54	58	51	40	28	21

73 Class Rates Houston, Tex., to Points on the Houston, East & West Texas Ry.

Station.	Distance.	Class. 1	2	3	4	5	A	B	C	D	E
	Miles.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.
Humble	17.1	16	14	12	10	8	9	7	6	5	5
Pauli	21.9	18	16	14	12	10	11	9	7	6	5
New Caney	28.3	20	18	16	14	12	13	11	9	7	6
Midline	36.5	23	21	19	17	15	16	14	11	9	7
Cleveland	43.2	25	23	21	19	17	18	15	12	10	8
Shepherd	55.3	29	27	25	23	19	20	17	14	12	9
Goodrich	63.4	32	29	27	25	20	21	18	15	13	10
Livingston	71.5	34	31	29	27	21	22	19	16	13	10
Leggett	79.7	37	34	32	30	23	24	21	18	14	11
Valda	83.7	38	35	33	30	23	24	21	18	14	11

Moscow	87.5	40	37	35	32	24	25	22	19	15	12
Carrigan	93.0	41	38	35	32	25	26	23	20	16	13
Renova	103.1	45	42	39	36	27	28	25	22	17	14
Lufkin	118.2	50	47	43	41	29	30	27	24	18	15
Angelina	126.4	52	48	44	42	30	31	28	25	18	15
Nacogdoches	138.3	55	51	46	44	32	33	30	26	19	16
Appleby	147.4	57	53	48	46	33	34	31	27	19	16
Garrison	158.4	60	56	51	49	34	35	32	28	20	16
Timpson	166.8	62	57	51	49	35	36	33	28	20	16
Tenaha	176.4	65	60	54	52	37	38	35	29	21	16
Joaquin	187.9	67	62	56	54	38	39	36	30	21	16
Shreveport	230.7	60	50	40	30	22	25	20	17	16	15

Class Rates Shreveport, La., to Points on the Houston East & West Texas Ry.

Station.	Distance.	Class. 1	2	3	4	5	A	B	C	D	E
	Miles.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.
Joaquin	42.8	40	28	24	24	24	24	23	17	14	9
Tenaha	54.3	51	42	34	31	26	28	24	21	19	15
Timpson	63.9	52	43	35	33	27	29	25	22	20	15
Garrison	72.3	56	47	39	36	30	32	28	24	21	15
Appleby	83.3	61	52	43	39	34	36	32	25	21	15
Nacogdoches	92.4	66	57	48	43	38	41	36	25	21	15
Angelina	104.3	68	58	50	47	40	44	37	27	22	15
Lufkin	112.5	69	59	50	47	40	44	37	29	22	15
Renova	127.6	74	65	54	52	42	45	39	31	22	18
Corrigan	137.7	77	67	54	52	42	45	39	31	22	18
Moscow	143.2	82	71	54	52	42	45	39	31	22	18
Valda	147.0	84	71	54	52	42	45	39	31	22	18
Leggett	151.0	84	71	54	52	42	45	39	31	22	18
Livingston	159.2	85	71	54	52	42	45	39	31	22	18
Goodrich	167.3	85	71	54	52	42	45	39	31	22	18
Shepherd	175.4	85	71	54	52	42	45	39	31	22	18
Cleveland	187.5	85	71	54	52	42	45	39	31	22	18
Midline	194.2	85	71	54	52	42	45	39	31	22	18
New Caney	203.4	85	71	54	52	42	45	39	31	22	18
Pauli	208.8	85	71	54	52	42	45	39	31	22	18
Humble	213.6	85	71	54	52	42	45	39	31	22	18
Houston	230.7	85	71	54	52	42	45	39	31	22	18

Note 1.—Rates from Dallas and Houston, Tex., to points in Texas on the Texas & Pacific Ry. and Houston East & West Texas Ry. as shown in Texas Lines Basing Tariff No. 2, Wyatt's I. C. C. No. 2.

Note 2.—All rates between Texas points and points in Louisiana as shown in Southwestern Lines Tariff 24-T, Leland's I. C. C. No. 871.

Note 3.—All mileages used as shown in Texas Lines Mileage Circular No. 6, Wyatt's I. C. C. No. 10, and Texas & Pacific Ry. Local Distance Table Circular 78, I. C. C. No. 1872.

EXHIBIT 2.

Comparison of Rates Paid by Wholesale Grocers at Shreveport and by Their Texas Competitors to Common Destinations.

From—	To—	Dist. Miles.	Sugar. Cents.	Flour. Cents.	Grain. Cents.	Hay. Cents.	Canned Goods. Cents.	Lard compounds. Cents.	Green coffee. Cents.	Bagging. Cents.	Ties. Cents.	Bagging and ties; carload. Cents.	Extracts. Cents.	Cheese. Cents.
Nacogdoches	Joaquin	49.6	21.0	21.0	21.0	20.5	21.0	21.0	21.0	21.0	21.0	18.0	27.0	25.0
Shreveport	...do.	42.8	24.0	24.0	24.0	24.0	24.0	24.0	24.0	24.0	24.0	24.0	40.0	28.0
Nacogdoches	Teneha	38.1	17.0	17.0	17.0	17.0	17.0	17.0	17.0	17.0	17.0	15.0	23.0	21.0
Shreveport	...do.	54.3	31.0	31.0	31.0	34.0	31.0	31.0	31.0	34.0	31.0	24.5	51.0	42.0
Nacogdoches	Timpson	25.8	13.0	13.0	13.0	13.0	13.0	13.0	13.0	13.0	13.0	11.0	19.0	17.0
Shreveport	...do.	63.9	33.0	33.0	33.0	35.0	33.0	33.0	33.0	35.0	33.0	24.5	52.0	43.0
Nacogdoches	Center	49.7	26.0	26.0	26.0	26.0	26.0	26.0	26.0	26.0	26.0	18.0	35.0	32.0
Longview	...do.	67.8	26.0	25.5	23.5	21.5	26.0	26.0	26.0	26.0	26.0	18.0	33.0	30.0
Shreveport	...do.	67.6	35.0	35.0	35.0	40.0	35.0	35.0	35.0	40.0	35.0	24.5	60.0	49.0
Longview	Backville	26.2	13.0	13.0	13.0	13.0	13.0	13.0	13.0	13.0	13.0	11.0	19.0	17.0
Shreveport	...do.	84.6	35.0	35.0	35.0	40.0	35.0	35.0	35.0	40.0	35.0	24.5	60.0	49.0
Marshall	Elysian Fields	17.5	10.0	10.0	10.0	10.0	10.0	10.0	10.0	10.0	10.0	8.0	16.0	14.0
Shreveport	...do.	57.3	71.0	71.0	71.0	74.0	71.0	71.0	71.0	74.0	71.0	24.5	105.0	92.0
Texarkana	Marshall	66.7	26.0	25.5	23.5	21.5	26.0	26.0	26.0	26.0	26.0	18.0	33.0	30.0
Shreveport	...do.	42.0	33.0	33.0	33.0	35.0	33.0	33.0	33.0	35.0	33.0	24.5	56.0	42.0
Texarkana	Jefferson	51.2	22.0	22.0	22.0	21.0	22.0	22.0	22.0	22.0	22.0	18.0	28.0	26.0
Marshall	...do.	15.7	10.0	10.0	10.0	10.0	10.0	10.0	10.0	10.0	10.0	8.0	16.0	14.0
Shreveport	...do.	47.7	30.0	30.0	30.0	35.0	30.0	30.0	30.0	35.0	30.0	24.5	56.0	42.0
Longview	San Augustine	87.2	37.0	32.5	29.5	27.0	37.0	37.0	37.0	37.0	37.0	18.0	48.0	44.0
Nacogdoches	...do.	69.1	32.0	32.0	32.0	30.0	32.0	32.0	32.0	32.0	32.0	18.0	42.0	38.0
Beaumont	...do.	120.5	38.0	29.0	26.5	25.5	41.0	41.0	41.0	41.0	41.0	18.0	51.0	47.0
Shreveport	...do.	85.0	39.0	39.0	39.0	43.0	39.0	39.0	39.0	43.0	39.0	24.5	61.0	52.0
Pittsburg	Avinger	30.9	12.0	12.0	12.0	12.0	12.0	12.0	12.0	12.0	12.0	10.4	21.0	19.0
Shreveport	...do.	66.1	42.0	42.0	42.0	44.0	42.0	42.0	42.0	44.0	42.0	24.5	64.0	51.0
Texarkana	Atlanta	23.8	12.0	12.0	12.0	12.0	12.0	12.0	12.0	12.0	12.0	10.0	18.0	16.0
Shreveport	...do.	60.8	33.0	33.0	33.0	35.0	33.0	33.0	33.0	35.0	33.0	24.5	56.0	42.0
Marshall	Waskom	19.1	11.0	11.0	11.0	11.0	11.0	11.0	11.0	11.0	11.0	9.0	17.0	15.0
Shreveport	...do.	80.5	33.0	33.0	33.0	33.0	33.0	33.0	33.0	0.0	0.0	0.0	39.0	27.0

75 EXHIBIT 3.

Comparison of Rates Paid by Wholesale Saddlery and Vehicle Dealers at Shreveport and by Their Texas Competitors at Common Destination.

From—	To—	Distance.	Wagons.	Buggies.	Saddles.	Harness.	Horse collars.	Leather.
		Miles.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.
Dallas	Jonesville	163.7	39.2	48.8	61.0	61.0	61.0	56.0
Shreveport	do.	26.0	40.0	60.0	40.0	40.0	40.0	28.0
Dallas	Marshall	147.7	36.8	45.6	57.0	57.0	57.0	53.0
Shreveport	do.	42.0	56.0	84.0	56.0	56.0	56.0	42.0
Dallas	Elysian Fields.	165.2	54.0	56.0	70.0	70.0	70.0	64.0
Shreveport	do.	57.3	105.0	157.5	105.0	105.0	105.0	82.0
Dallas	Teneha	180.2	58.0	59.2	74.0	74.0	74.0	68.0
Shreveport	do.	54.3	51.0	76.5	51.0	51.0	51.0	42.0
Dallas	Joaquin	192.0	58.0	60.8	76.0	76.0	76.0	70.0
Shreveport	do.	42.8	40.0	60.0	40.0	40.0	40.0	40.0

Comparison of Rates Paid by Furniture and Stationery Dealers at Shreveport and by Their Texas Competitors at Common Destinations.

From—	To—	Distance.	Stationery.	Document files, k d.	Sales books, cash slips.	Talking machines records.	Iron parts, office chairs.	Furniture, new, c. l.
		Miles.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.
Dallas	Nacogdoches	168.1	71.0	65.0	58.0	71.0	55.0	41.0
Galveston	do.	186.0	62.0	57.0	51.0	62.0	47.0	36.0
Shreveport	do.	92.4	66.0	57.0	48.0	66.0	43.0	41.0
Dallas	Tyler	103.4	53.0	49.0	36.0	53.0	41.0	25.6
Galveston	do.	262.8	81.0	74.0	64.0	81.0	60.0	45.0
Shreveport	do.	107.6	91.0	78.0	66.0	91.0	59.0	57.0
Dallas	San Augustine.	211.9	80.0	72.0	60.0	80.0	58.0	46.0
Galveston	do.	194.0	86.0	78.0	65.0	86.0	61.0	44.0
Shreveport	do.	85.0	61.0	52.0	43.0	61.0	39.0	36.0
Dallas	Longview	124.0	51.0	47.0	34.4	51.0	41.0	24.8
Galveston	do.	280.1	84.0	76.0	65.0	84.0	61.0	47.0
Shreveport	do.	65.7	60.0	49.0	40.0	60.0	35.0	35.0
Dallas	Pittsburgh	126.0	52.0	48.0	35.2	52.0	42.0	24.8
Galveston	do.	320.9	87.0	78.0	65.0	87.0	61.0	49.0
Shreveport	do.	97.0	74.0	60.0	53.0	74.0	52.0	46.0
Dallas	Clarksville	130.8	61.0	56.0	40.8	61.0	48.0	28.8
Galveston	do.	392.3	87.0	78.0	65.0	87.0	61.0	49.0
Shreveport	do.	133.1	105.0	92.0	74.0	105.0	71.0	58.0
Dallas	Carthage	160.6	69.0	63.0	57.0	69.0	54.0	40.0
Galveston	do.	233.5	82.0	75.0	65.0	82.0	61.0	42.0
Shreveport	do.	74.9	60.0	49.0	40.0	60.0	35.0	35.0
Dallas	Mineola	78.2	37.0	34.0	25.6	37.0	30.0	19.2
Galveston	do.	288.4	86.0	77.0	65.0	86.0	61.0	48.0
Shreveport	do.	111.5	79.0	64.0	58.0	79.0	55.0	48.0

76

Exhibit 4.

General Tariff of Class Rates, No. 3.

Effective February 10, 1902, with amendments in effect October 31, 1910.

The rates in this tariff shall be subject to Texas classification No. 1 and amendments or subsequent issue.

Section 1.—Table of Rates.

(Rates, in cents per 100 pounds to apply on merchandise by classes, transported by railroads between points in Texas, except as otherwise provided in Sections 2, 3, and 4, of this tariff.)

	Less than carloads.					Carloads.				
Distances, miles	1	2	3	4	5	A	B	C	D	E
10 and less	13	12	10	8	6	7	6	5	5	4
12 and over 10	14	12	11	9	6	7	6	5	5	4
15 and over 12	15	13	12	10	7	8	6	5	5	4
18 and over 15	16	14	12	10	8	9	7	6	5	5
21 and over 18	17	15	13	11	9	10	8	6	6	5
24 and over 21	18	16	14	12	10	11	9	7	6	5
27 and over 24	19	17	15	13	11	12	10	8	7	6
30 and over 27	20	18	16	14	12	13	11	9	7	6
33 and over 30	21	19	17	15	13	14	12	10	8	6
36 and over 33	22	20	18	16	14	15	13	10	8	7
39 and over 36	23	21	19	17	15	16	14	11	9	7
42 and over 39	24	22	20	18	16	17	14	11	9	7
45 and over 42	25	23	21	19	17	18	15	12	10	8
48 and over 45	26	24	22	20	17	18	15	12	10	8
51 and over 48	27	25	23	21	18	19	16	13	11	8
54 and over 51	28	26	24	22	18	19	16	13	11	9
57 and over 54	29	27	25	23	19	20	17	14	12	9
60 and over 57	30	28	26	24	19	20	17	14	12	9
63 and over 60	31	28	26	24	20	21	18	15	13	10
66 and over 63	32	29	27	25	20	21	18	15	13	10
69 and over 66	33	30	28	26	21	22	19	16	13	10
72 and over 69	34	31	29	27	21	22	19	16	13	10
75 and over 72	35	32	30	28	22	23	20	17	14	11
78 and over 75	36	33	31	29	22	23	20	17	14	11
81 and over 78	37	34	32	30	23	24	21	18	14	11
84 and over 81	38	35	33	30	23	24	21	18	14	11
87 and over 84	39	36	34	31	24	25	22	19	15	12
90 and over 87	40	37	35	32	24	25	22	19	15	12
93 and over 90	41	38	35	32	25	26	23	20	16	13
96 and over 93	42	39	36	33	25	26	23	20	16	13
99 and over 96	43	40	37	34	26	27	24	21	16	13
102 and over 99	44	41	38	35	26	27	24	21	16	13
105 and over 102	45	42	39	36	27	28	25	22	17	14
108 and over 105	46	43	40	37	27	28	25	22	17	14
111 and over 108	47	44	40	38	28	29	26	23	17	14
114 and over 111	48	45	41	39	28	29	26	23	17	14
117 and over 114	49	46	42	40	29	30	27	24	18	15
120 and over 117	50	47	43	41	29	30	27	24	18	15

124 and over 120	51	47	43	41	30	31	28	25	18	15
128 and over 124	52	48	44	42	30	31	28	25	18	15
132 and over 128	53	49	45	43	31	32	29	25	18	15
136 and over 132	54	50	45	43	31	32	29	26	19	16
140 and over 136	55	51	46	44	32	33	30	26	19	16
144 and over 140	56	52	47	45	32	33	30	26	19	16

77 Distances, miles.	Less than carloads. 1	2	3	4	5	Carloads. A	B	C	D	E
148 and over 144	57	53	48	46	33	34	31	27	19	16
152 and over 148	58	54	49	47	33	34	31	27	19	16
156 and over 152	59	55	50	48	34	35	32	27	20	16
160 and over 156	60	56	51	49	34	35	32	28	20	16
164 and over 160	61	56	51	49	35	36	33	28	20	16
168 and over 164	62	57	51	49	35	36	33	28	20	16
172 and over 168	63	58	52	50	36	37	34	29	20	16
176 and over 172	64	59	53	51	36	37	34	29	21	16
180 and over 176	65	60	54	52	37	38	35	29	21	16
184 and over 180	66	61	55	53	37	38	35	30	21	16
188 and over 184	67	62	56	54	38	39	36	30	21	16
192 and over 188	68	63	57	55	38	39	36	30	21	16
196 and over 192	69	64	58	56	39	40	37	31	22	17
200 and over 196	70	65	58	56	39	40	37	31	22	17
205 and over 200	71	65	58	56	40	41	37	31	22	17
210 and over 205	72	66	59	57	40	41	38	32	22	17
215 and over 210	73	67	59	57	41	42	38	32	22	17
220 and over 215	74	68	59	57	41	42	38	32	22	17
225 and over 220	75	69	59	57	42	43	39	33	23	17
230 and over 225	76	70	60	58	42	43	39	33	23	17
235 and over 230	77	70	60	58	43	44	39	33	23	17
240 and over 235	78	71	60	58	43	44	40	34	23	17
245 and over 240	79	71	60	58	44	45	40	34	23	17
Over 245	80	72	60	58	44	46	40	34	23	17

Section 2.—Joint Rates.

For the transportation of shipments over two or more railroads which are not under the same management and control, and not otherwise provided for, the rates shall be made by adding to the rates prescribed in table of rates, Section 1, of this tariff, the following, viz:

Class	1	2	3	4	5	A	B	C	D	E
Rate	8	7	6	5	4	4	4	3	2	2

Provided: 1. That when the sum of the rates prescribed for local application is less than a joint rate made in accordance with the above instructions, such sum of rates shall be used as the joint rate.

2. That the joint rates in common-point territory shall not exceed the following figures, viz:

Class	1	2	3	4	5	A	B	C	D	E
Rate	80	72	60	58	44	46	40	34	23	17

except in cases where greater rates may be made by using the rates provided in exceptions, Section 3, of this tariff.

NOTE.—The term "common-point territory" designates that portion of Texas lying south of the Amarillo division of the Chicago, Rock Island & Gulf Railway, but including Amarillo, and east of and including points on a line drawn from Amarillo via Midland (Cir. No. 3572, effective Nov. 1, 1910) on the Texas & Pacific Railway; San Angelo on the Gulf, Colorado & Santa Fe Railway; Brady on the Fort Worth & Rio Grande Railway; Llano on the Houston & Texas Central Railroad; San Antonio on the Galveston, Harrisburg & San Antonio Railway and San Antonio & Aransas Pass Railway; Laredo on the International & Great Northern Railroad, and Alice and Corpus Christi on the San Antonio & Aransas Pass Railway; provided, that no part of the St. Louis, Brownsville & Mexico Railway south of Sinton and the Texas Mexican Railway shall be included in common-point territory. (Cir. No. 2271, effective July 10, 1905.)

78 Exception 1 to Note.—The Wichita Valley Railway west of Sagerton shall be considered in differential territory. See exception 3, section 4, for special differential rates. (Cir. 3194, effective Sept. 15, 1909.)

Exception 2 to Note.—The Concho, San Saba & Llano Valley Railroad (canceled by Cir. No. 3368, effective Apr. 1, 1910).

Order.

At a General Session of the Interstate Commerce Commission, Held at Its Office, in Washington, D. C., on the 11th Day of March, A. D. 1912.

Charles A. Prouty, Judson C. Clements, Franklin K. Lane, Edgar E. Clark, James S. Harlan, Charle C. McChord, Balthasar H. Meyer, Commissioners.

No. 3918.

J. J. MEREDITH, SHELBY TAYLOR, and HENRY B. SCHREIBER, Constituting the Railroad Commission of Louisiana,

v.

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, ST. LOUIS SOUTHwestern Railway Company of Texas, Burrs Ferry, Browndel & Chester Railway Company, Eastern Texas Railroad Company, The Texas & Pacific Railway Company, Gulf, Colorado and Santa Fe Railway Company, Houston & Shreveport Railroad Company, The Houston, East & West Texas Railway Company, Texas & New Orleans Railroad Company, The Missouri, Kansas & Texas Railway Company of Texas, Texarkana & Fort Smith Railway Company, The Kansas City Southern Railway Company, The Texas & Gulf Railway Company, Marshall & East Texas Railway Company, Timpson & Henderson Railway Company, Shreveport, Houston & Gulf Railroad Company, Texas Southeastern Railroad Company, Caro Northern Railway Company, The Nacogdoches & Southeastern Railroad Company, International
79 & Great Northern Railroad Company, and Thomas J. Freeman, Receiver thereof; Groveton, Lufkin & Northern Railway Company, Moscow, Camden & San Augustine Railway, Jefferson & Northwestern Railway Company, The Gulf & Interstate Railway Company of Texas, The Galveston, Harrisburg & San Antonio Railway Company, Galveston, Houston & Henderson Railroad Company, The Trinity & Brazos Valley Railway Company, and Texas State Railroad.

This case being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof;

It is ordered, That defendants The Texas & Pacific Railway Company, The Houston, East & West Texas Railway Company, and Houston & Shreveport Railroad Company be, and they are hereby, notified and required to cease and desist, on or before the 1st day of May, 1912, and for a period of not less than two years thereafter abstain, from exacting their present class rates for the transportation of traffic from Shreveport, La., to the points in Texas herein-

after mentioned on their respective lines, as the Commission in said report finds such rates to be unjust and unreasonable.

It is further ordered, That defendant The Texas & Pacific Railway Company be, and it is hereby, notified and required to establish and put in force, on or before the 1st day of May, 1912, and maintain in force thereafter during a period of not less than two years, and apply to the transportation of traffic from Shreveport, La., to the below-named points in Texas, class rates which shall not exceed the following, in cents per 100 pounds, which rates are found by the Commission in its report to be reasonable, to wit:

80 On the Texas & Pacific Railway.

	Class rates in cents per 100 pounds.									
From Shreveport, La., to—	1	2	3	4	5	A	B	C	D	E
Waskom, Tex.	18	16	14	12	10	11	9	7	6	5
Jonesville, Tex.	19	17	15	13	11	12	10	8	7	6
Scottsville, Tex.	22	20	18	16	14	15	13	10	8	7
Marshall, Tex.	24	22	20	18	16	17	14	11	9	7
Hallsville, Tex.	29	27	25	23	19	20	17	14	12	9
Longview, Tex.	32	29	27	25	20	21	18	15	13	10
Willow Springs, Tex.	34	31	29	27	21	22	19	16	13	10
Camps, Tex.	35	32	30	28	22	23	20	17	14	11
Gladewater, Tex.	37	34	32	30	23	24	21	18	14	11
Big Sandy, Tex.	40	37	35	32	24	25	22	19	15	12
Hawkins, Tex.	42	39	36	33	25	26	23	20	16	13
Crow, Tex.	44	41	38	35	26	27	24	21	16	13
Mineola, Tex.	48	45	41	39	28	29	26	23	17	14
Grand Saline, Tex.	52	48	44	42	30	31	28	25	18	15
Edgewood, Tex.	54	50	45	43	31	32	29	26	19	16
Wills Point, Tex.	56	52	47	45	32	33	30	26	19	16
Elmo, Tex.	58	54	49	47	33	34	31	27	19	16
Terrell, Tex.	60	56	51	49	34	35	32	28	20	16
Lawrence, Tex.	61	56	51	49	35	36	33	28	20	16
Forney, Tex.	63	58	52	50	36	37	34	29	20	16
Mesquite, Tex.	65	60	54	52	37	38	35	29	21	16
Orphans' Home, Tex.	66	61	55	53	37	38	35	30	21	16

It is further ordered, That defendants The Houston, East & West Texas Railway Company and Houston & Shreveport Railroad Company be, and they are hereby, notified and required to establish and put in force, on or before the 1st day of May, 1912, and maintain in force thereafter during a period of not less than two years, and apply to the transportation of traffic from Shreveport, La., to the below-named points in Texas, class rates which shall not exceed the following, in cents per 100 pounds, which rates are found by the Commission in its report to be reasonable, to wit:

81 On the Houston, East & West Texas Railway.

	Class rates in cents 100 pounds.									
From Shreveport, La., to—	1	2	3	4	5	A	B	C	D	E
Joaquin, Tex.	25	23	21	19	17	18	15	12	10	8
Teneha, Tex.	29	27	25	23	19	20	17	14	12	9
Timpson, Tex.	32	29	27	25	20	21	18	15	13	10
Garrison, Tex.	35	32	30	28	22	23	20	17	14	11
Appleby, Tex.	38	35	33	30	23	24	21	18	14	11
Nacogdoches, Tex.	41	38	35	32	25	26	23	20	16	13
Angelina, Tex.	45	42	39	36	27	28	25	22	17	14
Lufkin, Tex.	48	45	41	39	28	29	26	23	17	14
Renova, Tex.	52	48	44	42	30	31	28	25	18	15
Corrigan, Tex.	55	51	46	44	32	33	30	26	19	16
Moscow, Tex.	56	52	47	45	32	33	30	26	19	16
Valda, Tex.	57	53	48	46	33	34	31	27	19	16
Leggett, Tex.	58	54	49	47	33	34	31	27	19	16
Livingston, Tex.	60	56	51	49	34	35	32	28	20	16
Goodrich, Tex.	62	57	51	49	35	36	33	28	20	16
Shepherd, Tex.	64	59	53	51	36	37	34	29	21	16
Cleveland, Tex.	67	62	56	54	38	39	36	30	21	16
Midline, Tex.	69	64	58	56	39	40	37	31	22	17
New Caney, Tex.	71	65	58	56	40	41	37	31	22	17
Pauli, Tex.	72	66	59	57	40	41	38	32	22	17
Humble, Tex.	73	67	59	57	41	42	38	32	22	17
Houston, Tex.	77	70	60	58	43	44	39	33	23	17

It is further ordered, That defendant The Texas & Pacific Railway Company be, and it is hereby, notified and required to cease and desist, on or before the 1st day of May, 1912, and for a period of not less than two years thereafter abstain, from exacting any higher rates for the transportation of any article from Shreveport, La., to Dallas, Tex., and points on its lines intermediate thereto, than are contemporaneously exacted for the transportation of such article from Dallas, Tex., toward said Shreveport for an equal distance, as said relation of rates has been found by the Commission in said report to be reasonable.

It is further ordered, That defendants The Houston, East & West Texas Railway Company and Houston & Shreveport Railroad Company be, and they are hereby, notified and required to cease and desist, on or before the 1st day of May, 1912, and for a period of not less than two years thereafter abstain, from exacting any higher rates for the transportation of any article from Shreveport, La., to Houston, Tex., and points on its line intermediate thereto, than are contemporaneously exacted for the transportation of such article from Houston, Tex., toward said Shreveport for an equal distance, as said relation of rates has been found by the Commission in said report to be reasonable.

82 And it is further ordered, That said defendants be, and they are hereby, notified and required to establish and put in force, on or before the 1st day of May, 1912, and maintain in force thereafter during a period of not less than two years,

substantially similar practices respecting the concentration of interstate cotton at Shreveport, La., to those which are contemporaneously observed by said defendants respecting the concentration of cotton within the state of Texas, provided the practices adopted shall be justifiable under the act to regulate commerce and applicable fairly under like conditions elsewhere on the lines of such defendants.

By the Commission:

[SEAL.] JOHN H. MARBLE, *Secretary.*

83 EXHIBIT B.

Extracts from Texas Statutes.

Art. 4562, Paragraphs 4 and 8 (R. S. 1895). May fix different rates.—The said commission may fix different rates for different railroads and for different lines under the same management, or for different parts of the same lines if found necessary to do justice, and may make rates for express companies different from the rates fixed for railroads.

May alter, abolish, etc.—The Commission shall have power and it shall be its duty from time to time, to alter, change, amend or abolish any classification or rate established by it when deemed necessary; and such amended, altered or new classifications or rates shall be put into effect in the same manner as the originals.

Art. 4564 (R. S. 1895). Rates to be held conclusive until, etc.—In all actions between private parties and railway companies brought under this law, the rates, charges, orders, rules, regulations and classifications prescribed by said Commission before the institution of such action shall be held conclusive, and deemed and accepted to be reasonable, fair and just, and in such respects shall not be controverted therein until finally found otherwise in a direct action brought for that purpose in the manner prescribed by Articles 4565 and 4566 of this chapter. (Ib., Sec. 5.)

Art. 4565 (R. S. 1895). When railway dissatisfied, may file petition, etc.—If any railroad company or other party at interest be dissatisfied with the decision of any rate, classification, rule, charge, order, act or regulation adopted by the Commission, such dissatisfied company or party may file a petition setting forth the particular cause or causes of objection to such decision, act, rate, rule, charge, classification or order, or to either or all of them, in a court of competent jurisdiction in Travis County, Texas, against said Commission as defendant. Said action shall have precedence over all other causes on the docket of a different nature, and shall be tried and determined as other civil causes in said court. Either party to said action may appeal to the Appellate Court having jurisdiction of said cause, and said appeal shall be at once returnable to said Appellate Court, at either of its terms, and said action so appealed shall have precedence in said Appellate Court of
84 all causes of a different character therein pending; provided, that if the court be in session at the time such right of

action accrues, the suit may be filed during such term and stand ready for trial after ten days' notice. (Ib., Sec. 6.)

Art. 4566 (R. S. 1895). Burden of proof.—In all trials under the foregoing article the burden of proof shall rest upon the plaintiff, who must show by clear and satisfactory evidence that the rates, regulations, orders, classifications, acts or charges complained of are unreasonable and unjust to it or them.

Art. 4571, Paragraph 3 (R. S. 1895). Duty as to through freights.—The said Commission shall have power, and it is hereby made its duty, to investigate all through freight rates on railroads in Texas; and when the same are, in the opinion of the Commission, excessive or levied or laid in violation of the interstate commerce law, or the rules and regulations of the Interstate Commerce Commission, the officials of the railroads are to be notified of the facts and requested to reduce them or make the proper corrections, as the case may be. When the rates are not changed or the proper corrections are not made according to the request of the Commission, the latter is instructed to notify the Interstate Commerce Commission and to apply to it for relief.

Art. 4573 (R. S. 1895). Penalty for extortion.—If any railroad company, subject to this chapter, or its agent or officer, shall hereafter charge, collect, demand or receive from any person, company, form or corporation a greater rate, charge or compensation than that fixed and established by the Railroad Commission for the transportation of freight, passengers or cars, or for the use of any car on the line of its railroad, or any line operated by it, or for receiving, forwarding, handling or storing any such freight or cars, or for any other service performed or to be performed by it, such railroad company and its said agent and officer shall be deemed guilty of extortion, and shall forfeit and pay to the State of Texas a sum not less than one hundred dollars nor more than five thousand dollars.

Art. 4575 (R. S. 1895). Liability under this chapter; venue.—In case any railroad subject to this chapter shall do, cause to be done, or permit to be done any matter, act or thing in this chapter prohibited or declared to be unlawful, or shall omit to do any act, matter or thing herein required to be done by it, such railroad shall be liable to the person or persons, firm or corporation injured thereby for
85 the damages sustained in consequence of such violation; and in case said railroad company shall be guilty of extortion or discrimination as by this chapter defined, then, in addition to such damages, such railroad shall pay to the person, firm or corporation injured thereby a penalty of not less than one hundred and twenty-five dollars nor more than five hundred dollars, to be recovered in any court of competent jurisdiction in any county into or through which such railroad may run; provided, that such road may plead and prove as a defense to the action for said penalty that such overcharge was unintentionally and innocently made through a mistake of fact; provided, that any such recovery as herein provided shall in no manner affect a recovery by the state of a penalty provided for such violation.

Art. 4576 (R. S. 1895 as amended in 1901). Penalty when not

otherwise provided.—If any railway company doing business in this state shall hereafter violate any other provision of this chapter, or shall do any other act herein prohibited, or shall fail or refuse to perform any other duty enjoined upon it for which a penalty has not been provided by law, or shall fail, neglect or refuse to obey any lawful requirement, order, judgment or decree made by the Railroad Commission of Texas, for every such act of violation it shall pay to the State of Texas a penalty of not more than $5,000.

Art. 4581-*a* (R. S. 1895). Emergency freight rates.—In addition to the powers conferred on the Railroad Commission of Texas by Articles 4563 and 4567 of the Revised Statutes of this state, said Commission shall have power, when deemed by it necessary, to stop or prevent interstate rate wars and injury to the business or interests of the people or railroads of this state, or in case of any other emergency, to be judged of by the Commission; and it shall be its duty, after three days' notice to the roads interested, to alter, amend or suspend any existing freight rate on any railroad in this state, or to fix freight rates where none exist.

Art. 4581-*b* (R. S. 1895). May apply to one or more roads or parts of roads.—Said emergency rates, so made by the Commission, shall apply on any one or more of all the railroads in this state, or part of railroads, as may be directed by the Commission.

Art. 4581-*c* (R. S. 1895). Rates take effect and remain in force, etc.—Said rates, so made, shall take effect at such time, and remain in force for such length of time, as may be prescribed by the Commission.

86 Act of July 12, 1907. Power to Make Emergency Rates.—That in addition to all other powers conferred by law upon the Railroad Commission of Texas, said Commission shall have the power to make temporary freight and passenger tariffs, to take immediate effect or at such times as shall be fixed by said Commission, whenever an emergency arises, the sufficiency of which shall be judged of by said Commission, in order that justice may be done or injury prevented any person, place or locality; and said Commission shall have the power at once to suspend temporarily any existing freight or passenger tariff and to establish freight and passenger tariffs, rules and regulations for temporary use to have immediate effect where none exists.

87 EXHIBIT C.

Rate Adjustment.

Portions of Texas & Pacific, St. Louis Southwestern Railway of Texas, and Missouri, Kansas & Texas Railway of Texas.

Circular No. 1178, effective September 7, 1900, and as amended by Circular No. 1531, effective February 10, 1902.

The charges for transporting shipments of the articles named in the following list, between points on the lines of railroad described below, shall be made at eighty (80) per cent. of the current rates on such articles:

Railroads upon which the adjustment of rate applies:

1. Between points on the Texas & Pacific Railway, and the Denison & Pacific Suburban Railway east of and including Denison, Sherman and Dallas, but not from Texarkana, Waskom and intermediate points on the Texas & Pacific Railway.

2. Between points on the Missouri, Kansas & Texas Railway of Texas east of and including McKinney, but not from Jefferson, Waskom and intermediate points on the Missouri, Kansas & Texas Railway of Texas.

3. Between points on the St. Louis Southwestern Railway of Texas east of and including Sherman, Plano and Dallas, and north of and including Tyler, but not from Texarkana.

List of articles subject to the adjustment of rates.

Carload and less than carload shipments of all articles which are, in carloads, subject to fifth-class and class- A, B, C, D and E rates.

Carload and less than carload shipments of:

Agricultural implements, including hand implements, plow points and other parts of agricultural implements, rough or finished, and wagons (farm) or parts of same, rough or finished.

Axes, in boxes.

Bagging for baling cotton (less than carload only).

Candy, invoice value 10 cents or less per pound.

Canned goods, consisting of canned fruits and vegetables, canned fish, lobsters, crabs, shrimps and clams, canned soup, broth, clam juice, cove oysters, canned syrup, jellies and preserves, in boxes, barrels or crates.

88 Cotton bale ties and buckles (carloads and less than carloads).

Cotton factory products.

Crackers.

Furniture, new, all kinds.

Glass, window, loaded in box cars.

Glassware, all kinds, except cut glassware.

Glucose, glucose syrup and grape syrup.

Iron and steel articles:

Architectural iron, including columns, pedestals, capitals, plates, saddles, door and window jambs, sills and lintels, rolled beams, angle bars and girders.

Axles, carriage or wagon.

Bolts, in boxes, barrels, casks or drums.

Bridge material, iron; merchants' iron, consisting of band, bar, boiler and plate iron and steel.

Carriage and wagon skeins and boxes in barrels, casks or kegs.

Castings, not machinery.

Chains, in bundles or casks.

Crowbars.

Fence posts.

Harrow teeth.

Hay bale ties.

Jail plate.

Kilns, lime, or parts thereof, manufactured of sheet or boiler iron,

with cast iron doors and door frames, grates and floors, K. D., crated, boxed or in bundles.
Lap rings.
Mattocks, in bundles.
Nails, cut or wire.
Nails, horse and mule shoe, in boxes or kegs.
Nuts, in boxes, barrels, casks or drums.
Picks, in bundles, barrels or casks.
Pipe, wrought, couplings and connections.
Plow steel, unfinished.
Poles, electric light or railway.
Rivets, in boxes or kegs.
Roofing, black, plain, corrugated or painted.
Sad irons, in bundles, boxes or casks.
Sash weights.
Sheet iron.
Shoes, horse or mule, in kegs.
Shutters.
89 Spikes, cut or wire.
Staples, in barrels, boxes or kegs.
Shingle bands, in bundles.
Skelp iron.
Sledges, in bundles (without handles).
Strap hinges, in barrels or kegs, invoice value 2½ cents or less per pound.
Washers, in boxes, barrels, casks or drums.
Wire, barbed or telegraph (not copper).
Wagon tires.
Wire rope.

NOTE.—When any of the foregoing articles are shipped together in mixed carloads they shall be charged eighty (80) per cent. of the rates prescribed in Commodity Tariff No. 17-A for the transportation of carload shipments of angle, hoop, rod and band iron.

Machinery, engines and boilers, except carload shipments of machinery, engines and boilers for cotton gins, cotton compresses and cotton seed oil mills.
Matches.
Packing house products.
Paints, dry or in oil.
Peanuts.
Rice.
Rope.
Shot.
Soap, common.
Soda, bi-carbonate of, and soda ash.
Starch.
Stoves and hollow ware, grates, fenders and baskets.
Sugar (except lemon and maple sugar), molasses, syrup, jelly, preserves, fruit butter and mince meat.
Tin plate.

Tobacco, plug, in packages weighing sixty pounds or more.
Tobacco, plug, in packages weighing less than sixty pounds each.
Trunks, empty, N. O. S.
Whisky and alcohol, in wood or glass, invoice value 50 cents or less per gallon.
Woodenware, viz.: Wooden bale boxes, barrel covers, barrel (paper), bowls, brush blocks, buckets, bungs, butter ladles, butter molds, butter trays, butter tubs, churns, clothes horses, clothes
90 pins, clothes racks, firkins, fish kits, handles (axe, broom and mop), kegs, measures, pails (wooden or paper) N. O. S., potato mashers, pastry boards, rolling pins, step and extension ladders N. O. S., tea caddies (wood), trays N. O. S., tubs, washboards, sieves, brooms, cheese and butter boxes, lap boards, skirt boards, lemon squeezers, tooth picks, match splints of wood, rope reels, shot cases, sieve rims, skewers, snow shovels, towel racks, wooden faucets, wooden scoops, wooden spoons, paper bags, blacking, blueing, bottles, brushes, cans, lamp chimneys, coffee mills, crayons, galvanized iron tubs and pails, ink, leads, mops (cotton), shot, paper, rope, pipes (smoking), twine, oil tanks and sifters. The above articles may be shipped together as mixed carloads of woodenware, minimum weight 15,000 pounds per car.

NOTE.—Baskets may be included with above articles of woodenware, carloads.

This order shall take effect September 7, 1900, it being understood that the Commission still holds under advisement for further action the matter of the adjustment herein provided, and will adopt, without further notice, such amendments to the order, respecting the extent of the territory in which the adjustment shall apply, the list of articles which shall be subject to it, and the percentage of the current rates, as actual conditions may require. (Circular No. 1178, effective September 7, 1900.)

NOTE.—The 10-cent rate authorized by Circular No. 1941, to apply on sundry commodities from Texarkana to Clarksville, canceled by Circular No. 2047, effective May 11, 1904.

EXCEPTION.—Box and crate material, in carloads, shall not be subject to the adjustment of rates prescribed by this order. (Circular No. 2445, effective April 7, 1906.)
(Extract from Sixteenth Annual Report of the Railroad Commission of the State of Texas for the year 1907, pages 265, 266 and 267.)

with cast iron doors and door frames, grates and floors, K. D., crated, boxed or in bundles.
Lap rings.
Mattocks, in bundles.
Nails, cut or wire.
Nails, horse and mule shoe, in boxes or kegs.
Nuts, in boxes, barrels, casks or drums.
Picks, in bundles, barrels or casks.
Pipe, wrought, couplings and connections.
Plow steel, unfinished.
Poles, electric light or railway.
Rivets, in boxes or kegs.
Roofing, black, plain, corrugated or painted.
Sad irons, in bundles, boxes or casks.
Sash weights.
Sheet iron.
Shoes, horse or mule, in kegs.
Shutters.
89 Spikes, cut or wire.
Staples, in barrels, boxes or kegs.
Shingle bands, in bundles.
Skelp iron.
Sledges, in bundles (without handles).
Strap hinges, in barrels or kegs, invoice value 2½ cents or less per pound.
Washers, in boxes, barrels, casks or drums.
Wire, barbed or telegraph (not copper).
Wagon tires.
Wire rope.

NOTE.—When any of the foregoing articles are shipped together in mixed carloads they shall be charged eighty (80) per cent. of the rates prescribed in Commodity Tariff No. 17-A for the transportation of carload shipments of angle, hoop, rod and band iron.

Machinery, engines and boilers, except carload shipments of machinery, engines and boilers for cotton gins, cotton compresses and cotton seed oil mills.
Matches.
Packing house products.
Paints, dry or in oil.
Peanuts.
Rice.
Rope.
Shot.
Soap, common.
Soda, bi-carbonate of, and soda ash.
Starch.
Stoves and hollow ware, grates, fenders and baskets.
Sugar (except lemon and maple sugar), molasses, syrup, jelly, preserves, fruit butter and mince meat.
Tin plate.

Tobacco, plug, in packages weighing sixty pounds or more.
Tobacco, plug, in packages weighing less than sixty pounds each.
Trunks, empty, N. O. S.
Whisky and alcohol, in wood or glass, invoice value 50 cents or less per gallon.
Woodenware, viz.: Wooden bale boxes, barrel covers, barrel (paper), bowls, brush blocks, buckets, bungs, butter ladles, butter molds, butter trays, butter tubs, churns, clothes horses, clothes
90 pins, clothes racks, firkins, fish kits, handles (axe, broom and mop), kegs, measures, pails (wooden or paper) N. O. S., potato mashers, pastry boards, rolling pins, step and extension ladders N. O. S., tea caddies (wood), trays N. O. S., tubs, washboards, sieves, brooms, cheese and butter boxes, lap boards, skirt boards, lemon squeezers, tooth picks, match splints of wood, rope reels, shot cases, sieve rims, skewers, snow shovels, towel racks, wooden faucets, wooden scoops, wooden spoons, paper bags, blacking, blueing, bottles, brushes, cans, lamp chimneys, coffee mills, crayons, galvanized iron tubs and pails, ink, leads, mops (cotton), shot, paper, rope, pipes (smoking), twine, oil tanks and sifters. The above articles may be shipped together as mixed carloads of woodenware, minimum weight 15,000 pounds per car.

NOTE.—Baskets may be included with above articles of woodenware, carloads.

This order shall take effect September 7, 1900, it being understood that the Commission still holds under advisement for further action the matter of the adjustment herein provided, and will adopt, without further notice, such amendments to the order, respecting the extent of the territory in which the adjustment shall apply, the list of articles which shall be subject to it, and the percentage of the current rates, as actual conditions may require. (Circular No. 1178, effective September 7, 1900.)

NOTE.—The 10-cent rate authorized by Circular No. 1941, to apply on sundry commodities from Texarkana to Clarksville, canceled by Circular No. 2047, effective May 11, 1904.

EXCEPTION.—Box and crate material, in carloads, shall not be subject to the adjustment of rates prescribed by this order. (Circular No. 2445, effective April 7, 1906.)

(Extract from Sixteenth Annual Report of the Railroad Commission of the State of Texas for the year 1907, pages 265, 266 and 267.)

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91 *Journal Entry.*

Proceedings of June 4, 1912.

No. 68.

THE TEXAS & PACIFIC RAILWAY COMPANY, Petitioner,
vs.
UNITED STATES OF AMERICA, Respondent; INTERSTATE COMMERCE COMMISSION, Intervener.

In said cause the petitioner was granted leave to file an amended petition. Thereupon said cause was set for hearing on Wednesday, June 26, at 10:30 A. M. with No. 67.

92 In the United States Commerce Court.

No. —. In Equity.

THE TEXAS & PACIFIC RAILWAY COMPANY, Petitioner,
vs.
UNITED STATES OF AMERICA, Respondent.

Amended Petition.

(Filed June 4, 1912.)

To the Honorable the Judges of the United States Commerce Court:

The Texas & Pacific Railway Company, a corporation duly and legally incorporated under the laws of the United States, files this its petition against the United States of America and thereupon complains and says:

I.

That petitioner is a carrier by rail engaged in the carriage of domestic commerce within the State of Texas and domestic commerce within the State of Louisiana respectively and of interstate commerce between the States of Texas and Louisiana and be-
93 tween the States of Texas and Louisiana and other states and territories of the United States and foreign countries and has been such carrier engaged in the carriage of such commerce during the time of all the happenings hereinafter referred to and for many years prior thereto; that the tariffs, rates, charges, classifications, regulations and practices observed and enforced by your petitioner in the conduct of interstate and foreign commerce during the time it has been conducting such business have been legally established, filed and observed; that the said tariffs, rates, charges, classifications, regulations and practices were, as your petitioner is informed and charges, just, fair and reasonable as to all parties, places, commodities and states interested therein.

II.

That heretofore, to-wit, on or about the 8th day of March, 1911, J. J. Meredith, Shelby Taylor and Henry B. Schreiber, constituting the Railroad Commission of Louisiana, filed their petition before the Interstate Commerce Commission against your petitioner and other carriers engaged in interstate commerce, among others the St. Louis Southwestern Railway Company of Texas, the Missouri, Kansas & Texas Railway Company of Texas, the Texas & Pacific Railway Company and others, said cause being No. 3918 on the docket of said Commission, wherein they complained of your petitioner and numerous railway companies, the names of which are set forth in said petition, which is herewith referred to and prayed to be taken as a part of this petition as fully as if set out at length herein
94 and which will be filed in this cause, of an alleged discrimination in rates on various commodities and articles of commerce in said petition mentioned and set forth, as between Shreveport, Louisiana and distributing points in Texas to competitive points in the State of Texas, and for cause of discrimination alleged in said petition that the defendants named therein charged, collected and received from said distributing points in Texas to said competitive points, rates which are much less by any method of comparison than the rates exacted by defendants for the transportation of similar articles between Shreveport and the same destinations, thereby giving and creating an undue advantage in said competitive territory to the distributing points in Texas, and it being, among other things, alleged that "The said rates between said Shreveport and said competitive points are so unjust, unreasonable and unduly prejudicial and discriminatory as to deprive the various shippers and consignees doing business at Shreveport of the benefits which, under just, reasonable and non-discriminatory rates would be afforded to such shippers and consignees at said Shreveport, and in many instances are absolutely prohibitive of any commerce between said Shreveport and said points in Eastern Texas." That answers were filed to said petition by various defendants named therein, among others by your petitioner; that thereafter, by permission of the said Interstate Commerce Commission numerous pleas of intervention were filed both by shippers and commercial bodies in the State of Louisiana joining in the prayer of the complainants. That testimony was taken and arguments made in said cause, and the same was submitted to the Commission on January 16, 1912.

95 III.

That on March 11, 1912, the Interstate Commerce Commission handed down a report and order in said cause. The majority of said Commission held with and decided in favor of the complainants and the minority of the Commission dissented from such holding.

IV.

The opinion of the majority of said Interstate Commerce Commission begins by stating what had been shown to be the policy of

the Texas Commission and after quoting numerous utterances of the Railroad Commission of Texas the opinion, among other things, states:

"There appears to be little question as to the policy of the Texas Commission. It is frankly one of protection to its own industries and communities. We find in the early reports of that Commission, which are quoted at length in the record, evidences that the Texas Commission believed that the interstate carriers operating from the north and east into Texas were pursuing a policy hostile to the development of that state. The Texas Commission was conscious that it was within the power of these interstate carriers to so adjust rates as to make Texas entirely or largely dependent upon other states and thus restrict the growth of her cities and fix the nature of her industries, the employments of her people, and the character of her civilization so far as these depend on economic and industrial conditions. With this thought in mind the Texas Commission sought to establish a Texas policy and to make the railroads within that state contribute in the manner believed by her own
96 people to best subserve their own interests."

That thereafter in said opinion the Interstate Commerce Commission stated the real nature of petitioner's complaint in said cause as follows:

The Problem Raised.

"The petition of the complainants is that this Commission 'establish the same basis of rates of transportation between Shreveport and east Texas points as are accorded by defendants to Texas competitors of Shreveport interests in the same line of business for the same distances.'"

The opinion then states that the Interstate Commerce Commission has no power or authority to prescribe rates for intrastate transportation within the State of Texas and propounds the following question:

"Passing then to the question of discrimination, has this Commission the power to say that whatever rates an interstate carrier makes between points in Texas shall not be exceeded for the same distance under like conditions between Shreveport and Texas points? In other words, may a carrier engaged in interstate commerce discriminate against a city beyond the border of a state by imposing upon that city's traffic rates which deny its shippers access upon equal terms to the communities of an adjoining state?"

The Interstate Commerce Commission thereupon announces the conclusion that it has the power to prevent such discrimination as follows:

97 "An interstate carrier must respect the federal law, and if it is also subjected to state law it must respect that in so far as it can without doing violence to its obligations under the national authority. Before us are carriers which undeniably discriminate directly against interstate traffic. To this charge they plead that all they have done was to obey the orders of a state commission, as against which they were helpless. They appealed to no court for

relief, nor to this Commission. When the State of Louisiana after years of endurance makes complaint to this body these carriers make no showing of the reasonableness of their rates other than that heretofore dealt with—a traffic adjustment equalizing gateways—and even in this defense all the carriers do not join. The class rate of the Texas Commission within the distances here involved are not too low. This the carriers themselves do not urge. Yet they have maintained higher rates from Shreveport, the interstate point. While the Texas commission has evidenced a policy of home protection for its own state cities, there is every evidence that the carriers moving into and within Texas accepted this policy as their own, claiming that not to have adopted it would have led to reprisal on the part of the state authorities. Such conditions may not continue under this act. The interstate carrier which adopts a policy, even under state direction, that makes against the interstate movement of commerce must do so with its eyes open and fully conscious of its responsibilities to the federal law which guards commerce 'among the states' against discrimination.

It is suggested that the exercise of such power to end discrimination between rates within a state and rates to interstate points must surely lead to a conflict in which the jurisdiction of one sovereignty or the other must give way. To this suggestion the one and sufficient answer is that when conditions arise which in the fulfillment
98 of its obligation and the due exercise of its granted power to regulate commerce among the states make such course necessary the national government must assume its constitutional right to lead."

That thereupon the opinion announces the following conclusions:

"We find:

(1) That the present class rates out of Shreveport to points in Texas on the Texas & Pacific Railway included in the following table, and to points in Texas on the Houston, East & West Texas Railway, are unjust and unreasonable.

(2) That just and reasonable class rates on these lines of railroad should not exceed the following:

On the Texas & Pacific Railway.

From Shreveport, La. to—	Distance, Miles.	Class rates in cents per 100 pounds.									
		1	2	3	4	5	A	B	C	D	E
Waskom, Tex	22.7	18	16	14	12	10	11	9	7	6	5
Jonesville, Tex	26.0	19	17	15	13	11	12	10	8	7	6
Scottsville, Tex	34.1	22	20	18	16	14	15	13	10	8	7
Marshall, Tex	42.0	24	22	20	18	16	17	14	11	9	7
Hallsville, Tex	55.2	29	27	25	23	19	20	17	14	12	9
Longview, Tex	65.7	32	29	27	25	20	21	18	15	13	10
Willow Springs, Tex	69.1	34	31	29	27	21	22	19	16	13	10
Camps, Tex	72.6	35	32	30	28	22	23	20	17	14	11
Gladewater, Tex	78.2	37	34	32	30	23	24	21	18	14	11
Big Sandy, Tex	88.3	40	37	35	32	24	25	22	19	15	12
Hawkins, Tex	94.0	42	39	36	33	25	26	23	20	16	13
Crow, Tex	100.5	44	41	38	35	26	27	24	21	16	13
Mineola, Tex	111.5	48	45	41	39	28	29	26	23	17	14
Grand Saline, Tex	124.6	52	48	44	42	30	31	28	25	18	15
Edgewood, Tex	135.1	54	50	45	43	31	32	29	26	19	16
Wills Point, Tex	142.3	56	52	47	45	32	33	30	26	19	16
Elmo, Tex	151.4	58	54	49	47	33	34	31	27	19	16
Terrell, Tex	157.9	60	56	51	49	34	35	32	28	20	16
Lawrence, Tex	161.9	61	56	51	49	35	36	33	28	20	16
Forney, Tex	169.4	63	58	52	50	36	37	34	29	20	16
Mesquite, Tex	177.6	65	60	54	52	37	38	35	29	21	16
Orphans Home, Tex	182.3	66	61	55	53	37	38	35	30	21	16

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On the Houston, East & West Texas Railway.

From Shreveport, La., to—	Distance, Miles.	Class rates in cents per 100 pounds.									
		1	2	3	4	5	A	B	C	D	E
Joaquin, Tex	42.8	25	23	21	19	17	18	15	12	10	8
Teneha, Tex	54.3	29	27	25	23	19	20	17	14	12	9
Timpson, Tex	63.9	32	29	27	25	20	21	18	15	13	10
Garrison, Tex	72.3	35	32	30	28	22	23	20	17	14	11
Appleby, Tex	83.3	38	35	33	30	23	24	21	18	14	11
Nacogdoches, Tex	92.4	41	38	35	32	25	26	23	20	16	13
Angelina, Tex	104.3	45	42	39	36	27	28	25	22	17	14
Lufkin, Tex	112.5	48	45	41	39	28	29	26	23	17	14
Renova, Tex	127.6	52	48	44	42	30	31	28	25	18	15
Corrigan, Tex	137.7	55	51	46	44	32	33	30	26	19	16
Moscow, Tex	143.2	56	52	47	45	32	33	30	26	19	16
Valda, Tex	147.0	57	53	48	46	33	34	31	27	19	16
Leggett, Tex	151.0	58	54	49	47	33	34	31	27	19	16
Livingston, Tex	159.2	60	56	51	49	34	35	32	28	20	16
Goodrich, Tex	167.3	62	57	51	49	35	36	33	28	20	16
Shepherd, Tex	175.4	64	59	53	51	36	37	34	29	21	16
Cleveland, Tex	187.5	67	62	56	54	38	39	36	30	21	16
Midline, Tex	194.2	69	64	58	56	39	40	37	31	22	17
New Caney, Tex	203.4	71	65	58	56	40	41	37	31	22	17
Pauli, Tex	208.8	72	66	59	57	40	41	38	32	22	17
Humble, Tex	213.6	73	67	59	57	41	42	38	32	22	17
Houston, Tex	230.7	77	70	60	58	43	44	39	33	23	17

(3) That such carriers maintain higher rates from Shreveport to points in Texas than are maintained from cities within Texas to such points under substantially similar conditions and circumstances.

(4) That thereby an unlawful and undue preference and advantage is given to such Texas cities, and a discrimination that is undue and unlawful is effected against Shreveport.

(5) That an order should be issued directing said carriers to establish and maintain rates no higher than those above found to be reasonable out of Shreveport to the Texas points named under western classification.

(6) That the Texas & Pacific Railway Company shall cease and desist from charging higher rates upon any commodity from Shreveport into Texas than are contemporaneously charged for the carriage of such commodity from Dallas toward Shreveport for an equal distance.

100 (7) That the Houston & Shreveport Railroad Company and the Houston, East & West Texas Railway Company shall cease and desist from charging higher rates upon any commodity from Shreveport into Texas than are contemporaneously charged for the carriage of such commodity from Houston toward Shreveport for an equal distance.

It will be the duty of the carriers under such order to duly and justly equalize the terms and conditions upon which they will extend transportation to traffic of a similar character moving into Texas from Shreveport with that moving wholly within Texas. But in effecting such equalization the class scale of rates prescribed above shall not be exceeded.

As to the matter of the concentration of Texas cotton at Shreveport specifically dealt with in the complaint we find the carriers pursuing a policy with respect to Texas cotton within Texas which they do not apply to Shreveport. This discrimination is likewise disapproved. Whatever is the practice pursued respecting the concentration of cotton within Texas the carrier shall be ordered to apply at Shreveport, provided the practice adopted shall be one justifiable under the act to regulate commerce and applicable fairly under like conditions elsewhere on the lines of the carriers."

In accordance with said opinion and conclusions an order was entered making effective the conclusions so announced, the same to become operative on or before the 1st day of May, 1912, and to remain in force for a period of not less than two years thereafter. Concurring opinions were filed, both of which reached the conclusion that the Interstate Commerce Commission had the power to prevent discrimination against interstate rates by state

101 rates which covered a part of the line of transit of the interstate route. The three dissenting opinions announced the proposition that the Interstate Commerce Commission had no authority under the Act to Regulate Commerce or otherwise, to control state rates, or to adopt intrastate rates made under state authority as measures of interstate rates without finding that the interstate rates complained of were unreasonable and that the intra-state rates were reasonable, and that the order based upon the opinions of the

majority exceeded the powers of the Interstate Commerce Commission under the law and was therefore null and void. A copy of the report and order of the Interstate Commerce Commission in said cause No. 3918 is hereto attached, marked Exhibit A and is prayed to be taken as a part hereof as fully as if set out at length herein. That thereafter on or about the 19th day of April, 1912, prior to the date when said order by its terms was to become effective, the Interstate Commerce Commission by its order, duly entered in that behalf, extended the effective date of said order to June 1, 1912. That said order by its terms is directed only against your petitioner and the Houston, East & West Texas Railway Company and the Houston & Shreveport Rai-road Company, but petitioner alleges that the Missouri, Kansas & Texas Railway Company of Texas extends from the City of Dallas, in said State of Texas, to the said City of Shreveport, and likewise the St. Louis Southwestern Railway Company of Texas, in connection with its affiliated line, the St. Louis Southwestern Railway Company, extends from said City of Dallas to said City of Shreveport and each of said companies extends to various commercial points of distribu-
102 tion in east Texas which are in competition with the City of Shreveport and also with the various cities and towns situated on the lines of your petitioner and also upon the lines of the Houston, East & West Texas Railway Company and the Houston & Shreveport Railroad Company and by reason of competitive conditions it is necessary for these lines, both of which were parties to said cause, to adopt whatever rates are in force upon the lines of your petitioner and the Houston, East & West Texas Railway Company and the Houston & Shreveport Railroad Company. That the line of your petitioner extends from the City of New Orleans to El Paso, Texas, and from Marshall, Texas, to Texarkana, Texas, and from Texarkana, Texas, through cities of Sherman, Paris and other places to Ft. Worth, Texas, with various branch lines in Louisiana, making in all 1,885 miles of railroad, and connects with various other railways in the States of Texas and Louisiana and over which by through routes and joint rates it transports large quantities of interstate commerce to and from the City of Shreveport and to and from various states and territories of the United States through said city. That the City of Shreveport has a population of about 30,000 inhabitants and is situated in the northwestern part of the State of Louisiana, about 42 miles from the Texas-Louisiana state line. That it does a large jobbing business and there is tributary thereto a large territory within the State of Texas. That the City of Dallas has a population of approximately 100,000 inhabitants, and is situated in the northern part of Texas, approximately 73 miles from the Oklahoma-Texas state line and 190 miles west of the City of Shreveport, and does a large jobbing and distributing business in the territory between Dallas and Shreveport, which ter-
ritory may be described as competitive territory for the job-
103 bing interests of the two cities. That the City of Houston is situated in the southeastern part of the State of Texas, has a population of approximately 110,000 inhabitants and is distant

from Shreveport approximately 231 miles. It is a large jobbing center and the territory in Texas lying between it and said City of Shreveport is competitive territory for the jobbing interests of the two cities. That the City of Dallas is connected with the City of Shreveport by the line of your petitioner and also by that of the Missouri, Kansas & Texas Railway of Texas and by the St. Louis Southwestern Railway Company of Texas in connection with its affiliated line, the St. Louis Southwestern Railway. The City of Houston is connected with said City of Shreveport by the lines of the Houston, East & West Texas Railway Company and the Houston & Shreveport Railroad Company.

V.

That in said petition of the Railroad Commission of Louisiana hereinabove referred to the rates, both class and commodity, were complained of as being unreasonable in themselves and also as discriminatory against the City of Shreveport, in that for equal distances rates from Shreveport to the said competitive territory within the State of Texas were greater than the rates from the Texas cities and particularly said cities of Houston and Dallas, it being alleged in said petition that the rates from the Texas cities to said competitive territory had been established by the Texas Commission for
the purpose of protecting Texas manufacturers and whole-
104 salers in said competitive territory against the manufacturers
and wholesalers of the City of Shreveport and that the Texas Commission had so framed the rates from the Texas cities to this competitive territory as to preserve it for Texas manufacturers and jobbers and prevent the Shreveport manufacturers and jobbers from making sale of their goods and wares in this competitive territory. While the rates were alleged to be unjust and unreasonable in themselves the real contention of the Louisiana Commission in said cause was that the same effected an unjust and unlawful discrimination in favor of Texas manufacturers and jobbers as compared with the rates which were established by the Texas Commission to competitive points. That there was no substantial evidence introduced on the hearing of said cause to the effect that the rates complained of, either class or commodity, were unjust or unreasonable in and of themselves and the Interstate Commerce Commission in its report and order does not find that the several commodity rates complained of were either unjust or unreasonable in and of themselves, but does find, basing its finding solely and exclusively upon a comparison of said commodity rates from Shreveport to Texas with the commodity rates in force between points in Texas for equal distances, that said commodity rates between Shreveport and Texas were unjustly and unduly discriminatory, all of which will more fully appear from the report and order of the Commission hereinabove referred to. That the power of the Interstate Commerce Commission under the law, as petitioners, are informed and believe and, therefore, charge, was
and is to find whether or not the commodity rates established
105 by the carriers and complained of by the Louisiana Commission were in themselves unjust and unreasonable and

unless they found them so to be to continue them in force and if they found them so to be to prescribe rates in themselves just and reasonable. Your petitioners aver that the Interstate Commerce Commission has wholly failed and refused to pass upon the question of the reasonableness of the commodity rates established by the carriers and complained of in said cause and made no finding that they were in any respect unjust or unreasonable, but held that such rates discriminated against the City of Shreveport, because for equal distances they were greater than the rates established by the Railroad Commission of Texas from the Cities of Dallas and Houston and other points in Texas to apply on traffic originating at such points and destined to points within the State of Texas and wholly carried within that state, such traffic being entirely within the State of Texas and said rates being established by the Railroad Commission of Texas under circumstances hereafter set forth.

VI.

That heretofore, to-wit, on or about the 21st day of April, 1891, the legislature of the State of Texas, in pursuance of a constitutional provision duly authorizing it thereto passed an act creating the Railroad Commission of Texas with full and complete power over all intra-state railroad traffic. The said act gives the Railroad Commission of Texas power to classify freight, to fix reasonable rates for transportation of freight between points within the state, to
fix different rates for different railroads, for different lines
106 under the same management, and for different parts of the
same line and to change and alter said rates. That said act likewise confers power upon the Railroad Commission of Texas to correct abuses in the management of railways and confers upon that body large and comprehensive powers in the control, management and operation of railways within that state. That since the passage of the original act hereinabove referred to, amendments and additions have been made thereto conferring upon said Commission power to make freight and passenger rates to take immediate effect or at such time as might be fixed, whenever an emergency shall arise, the sufficiency of which emergency was to be determined by said Commission and also conferring upon said Commission power temporarily to suspend existing rates. That under and by virtue of the laws so passed by the legislature of the State of Texas, the Railroad Commission of Texas has established and enforced from the time of its creation, rates, tariffs, regulations and classifications on all and every character of property what ever transported by railroads between points in the State of Texas and have enforced the observance of same. That under the provisions of said Railroad Commission Act the Railroad Commission of Texas has full power and authority to initiate and establish absolute rates. That the carriers thereunder have no right under the law to charge, demand or receive a greater or less rate than that fixed by the Railroad Commission for the carriage either of freight or passengers. That a departure from the rates so established by the Railroad Commission of Texas is made an offense punishable by severe

penalties; that to charge, demand or receive a greater rate
107 than that fixed by the Commission is declared an extortion under the act punishable by fine, accruing to the State of Texas, of not less than $500 nor more than $5,000, and in addition to the penalties thus accruing to the State of Texas, collection of which is enforced by the order of the Railroad Commission of Texas through suits by the Attorney General of said state acting under its direction, a penalty accrues to the individual so charged or paying said excessive rate of not less than $125 nor more than $500. That to charge a less rate than fixed by the Commission of Texas is a violation of the order of said Commission, punishable by fine, collected as above stated, of not more than $5,000, all of which will more fully appear from Exhibit B, hereto attached, and hereby made a part of this petition, and is prayed to be taken and considered as fully as if set out at length herein. That under said act the rates, rules, orders and regulations of the Railroad Commission of Texas cannot be collaterally assailed and are held to be conclusive unless set aside in a direct action brought for that purpose against the Railroad Commission of Texas and unless shown in such proceeding to be unjust and unreasonable by clear and satisfactory proof, which clear and satisfactory proof has been defined by the Supreme Court of the State of Texas the court of highest and ultimate jurisdiction in said state, to be proof beyond a reasonable doubt. That said Supreme Court of the State of Texas has held that the Railroad Commission of Texas has with regard to the initiation and establishment of rates all powers possessed by the railways themselves prior to the creation of said Commission. That
from the date of its installation under the laws aforesaid
108 the Railroad Commission of Texas has continuously exercised the powers conferred by said act and other acts of the legislature of the State of Texas amendatory thereof and supplementary thereto in the fixing of rates within the State of Texas, for the distribution therein of the products of manufacturers and wholesalers and others within the State of Texas, and has continuously exercised the power of making emergency rates within the State of Texas when rates into that state from points beyond the state were reduced in such manner as in the judgment of the Railroad Commission of Texas injuriously affected the interests of manufacturers, wholesalers, jobbers and others within that state.

VII.

That the rates fixed by the Texas Railroad Commission on all articles and commodities complained of by the Louisiana Commission were and are unjustly low and were less than just and reasonable rates. That in order to preserve the competitive territory of northeastern Texas lying between Dallas and the Arkansas-Texas and Louisiana-Texas state lines as a territory in which Dallas and other manufacturers and merchants might overcome competition from points without the state the Railroad Commission of Texas established distance rates which were 80 per cent. of their standard

distance class rates and on a number of commodities applied the same percentage of their standard distance commodity rates over the following lines of railway: The Texas & Pacific Railway, Denison, Pacific & Suburban Railway east of and including Denison, Sherman and Dallas, but not from Texarkana and Waskom and intermediate points; and between points on the Missouri, Kansas & Texas Railway Company of Texas east of and including McKinney, but not from Jefferson, Waskom and intermediate points; and between points on the St. Louis Southwestern Railway Company of Texas east of and including Sherman, Plano and Dallas and north of and including Tyler, but not from Texarkana; said rate adjustment being set out in Circular No. 1178 of said Railroad Commission of Texas, effective September 7, 1900, as amended by Circular No. 1531, effective February 10, 1902, which said order is attached, marked Exhibit C and made a part hereof. The said Commission gave as its reason for the installation of said special rates of 80 per cent. of the standard distance rates applicable between other points within the State of Texas, that the inbound interstate rates to Shreveport and Texarkana were so far less than the inbound interstate rates to Dallas and other Texas distributing points that said cities and distributing points were unable to compete with said cities of Texarkana and Shreveport for the business of the intermediate towns, cities and communities. Your petitioner alleges that the standard distance scale of rates of the Texas Commission on the classes and commodities involved herein for the several distances involved in the order of the Interstate Commerce Commission herein, by reason of the lack of density of traffic, and of the connection of said mileage scale of rates with the blanket or common point territory provided in the rules and regulations of the Texas Railroad Commission are unjust and unreasonably low in and of themselves and that said 80 per cent. of said standard rates prescribed in said circular of the Railroad Commission of Texas hereinabove referred to is inherently unreasonable and unjust.

109

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VIII.

That your petitioner and all of the Texas carriers, including those made parties to said petition of the Railroad Commission of Louisiana, recognized that the rates established by the Railroad Commission of Texas were unjust and unreasonable and protested against the same, but notwithstanding such protest said Commission installed said rates although they were unreasonably low and non-compensatory, and your petitioner and said Texas carriers have obeyed and accepted the same for the reason that non-observance thereof would have made them and each of them liable to prosecution and extreme and severe penalties, your petitioner being advised and believing that the making of intra-state rates was within the exclusive jurisdiction of the Railroad Commission of Texas and then believing and now believing that the Interstate Commerce Commission was wholly without power, authority or jurisdiction to make such intrastate rates the legal measure of interstate rates. Your petitioner

further alleges that it accepted said rates so prescribed by the Railroad Commission of Texas for the reason that it was advised and believed that under the broad powers conferred upon the Railroad Commission of Texas it would be extremely difficult, if not wholly impossible, to set aside said rates without attacking the whole
111 body of rates established and enforced by the Railroad Commission of Texas; and your petitioner avers that the Railroad Commission of Texas asserts and by its continuous practice has indicated that it has the right under the laws of said state to so adjust rates wholly within the State of Texas as to enable cities, towns and communities within said state to successfully compete with cities, towns and communities without said state, and on information and belief petitioner alleges the fact to be that said Railroad Commission of Texas, if in its judgment it believes that the rates made by the order of the Interstate Commerce Commission herein complained of will injuriously affect the commerce of the cities and towns within the area covered by said order, will further reduce said intra-state rates in order to meet the competition created by the order herein complained of; and petitioner further avers that the order of the Interstate Commerce Commission herein complained of leaves petitioner and all other carriers affected thereby without relief in this: that the Railroad Commission of Texas continuously reduces the intra-state rates in order to meet the interstate competition, whereupon the Interstate Commerce Commission reduces the interstate rates for the purpose of meeting the intra-state competition whereby your petitioner and the other carriers affected must suffer the continuous reduction of rates not justified by proof or finding that the rates so reduced are unjust or unreasonable in and of themselves; that your petitioner being wholly without power to raise the intra-state rates so adopted by the Interstate Commerce Commission as a legal measure of the justness of the interstate rates is wholly without remedy in the premises.

112 IV.

That said order of the Interstate Commerce Commission herein complained of provides that your petitioner shall cease and desist from charging higher rates upon any commodity from Shreveport into Texas than are contemporaneously charged for the carriage of such commodity from Dallas toward Shreveport for an equal distance; that the State of Texas has a classification of its own in which many articles are differently classed from the classification provided in the Western Classification and in the great majority of instances carload minima in said Texas Classification are much less than in Western Classification and the mixtures are different under the Texas Classification, a jobber being able to substantially make his own mixture of any kind of freight, the result being that movement of freight under the Texas Classification is far more onerous upon the carriers than the movement of freight under the Western Classification and the rates received for carrying any given item of traffic returning less revenue to the carriers than if carried under Western Classification; that the Interstate Commerce Commission adopts the

Western Classification in regard to freight carried from Western Classification territory into the State of Louisiana as well as into the State of Texas, but under the order of said Commission herein complained of your petitioner and all other carriers affected thereby, in applying to traffic moving out of Shreveport the rates established by the said order, will be compelled to adopt the Texas Classification, so that by the establishment of said rates the Interstate Commerce Commission has discriminated against your petitioner and other carriers affected thereby; that except as to Shreveport on interstate traffic moving from Western Classification territory into other parts of Texas the Western Classification will control. Said Western Classification has been adopted by the Louisiana Commission applying to freight moving from one point in the State of Louisiana to another point in the State of Louisiana, so that the order of the Interstate Commerce Commission discriminates in favor of Shreveport in Louisiana and works an unjust and unlawful discrimination against carriers handling the Shreveport traffic destined to Texas.

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X.

Your petitioner shows that there is a large traffic in the articles and commodities mentioned and described in said order of said Interstate Commerce Commission made in said case No. 3918 transported by petitioner from points outside of Texas through Shreveport and by your petitioner from distributing points in Texas to that portion of the territory covered by said order, for which transportation your petitioner now receives and has received a large revenue in the way of freight charges; that the order so promulgated by said Interstate Commerce Commission will materially reduce the receipts of your petitioner from such transportation. Petitioner on information and belief avers the facts to be that the rates on a large amount of traffic in the territory along and adjacent to the Mississippi River are exceedingly low by reason of the fact that such traffic can be and is transported by water over said river and its tributaries and over the Gulf of Mexico and the waters with which it connects; that this is especially true with reference to interstate freight traffic; that the town of Shreveport, Louisiana, is situated on the Red River, which is a tributary of the Mississippi River, and is nearer the Mississippi River than the Texas distributing points referred to in said cause No. 3918, and that Shreveport is connected with the Mississippi River by several lines and roads of railway and is accorded lower rates on inbound freight by reason of its location as aforesaid than are accorded to distributing points in Texas mentioned and described in said cause No. 3918 and in the order made in said cause, and that, therefore, the City of Shreveport and the territory adjacent thereto receive and have the benefit of these lower rates, and that the interests in whose behalf the complaint was made in said cause No. 3918, and for whose benefit the order was entered therein, have and receive the benefits of the lower rates on freight traffic aforesaid, and that when such rates are added to the outbound rates from Shreveport it will be found, as your petitioner is informed

114

and believe-, and on such information and belief alleges the facts so to be, that the total transportation charge on the commodities and classes mentioned and described in said order, under existing rates, to the territory mentioned and described therein, handled by the said interests at Shreveport, will not be materially higher than the total transportation charge will be on the same commodity handled into the same territory from the distributing points in Texas directly affected by said order. Your petitioner is informed and be-
115 lieves, and on such information and belief allege- the facts to be, that in most instances the total transportation charges are less. Your petitioner is further informed and believes, and on such information and belief allege- the facts to be, that if said order of the Interstate Commerce Commission herein complained of is enforced that on the great volume of the freight traffic referred to by said order the total transportation charge into and out of Shreveport to the territory directly affected by said order will be largely reduced and will be much lower than the total transportation charges on freight traffic which moves into and out of the Texas distributing points to the said territory; that thereby a large amount of freight traffic now handled by your petitioner from Texas distributing points to said territory and from points outside of Texas other than Shreveport will be transferred to the business men of Shreveport from the distributing points in Texas aforesaid and from the distributing points outside of Texas other than Shreveport, and that in consequence thereof it will entail upon your petitioner large and substantial losses in freight revenue as is hereinafter more specifically set out.

Petitioner further shows that by reason of the provisions of the laws regulating interstate commerce, and especially the provisions of Section 4 of the said act as amended, and natural and competitive conditions as to water rates, rail rates and commercial competition, that the material reductions made from Shreveport to Texas points mentioned and described in said order will necessarily disturb and reduce freight rate conditions over a very large scope of territory; that your petitioner and other interested lines of railway have
116 always heretofore tried to adjust fairly, justly and reasonably the interstate rates to and from all points in the Southwest so as to prevent unreasonable discriminations and unduly prejudicial conditions in any part of said southwestern territory; that a large proportion of the classes and commodities on which material reductions are made by such order of said Interstate Commerce Commission in said cause No. 3918 are transported into southwestern territory through various gateways leading thereto, such as Chicago, Kansas City, St. Louis, Little Rock, Memphis, Vicksburg, Shreveport, New Orleans, Galveston, and other minor gateways; that the material reductions made by said order on a portion of the line over one of the main channels leading to and from the low rates on the Mississippi River will of necessity produce a reduction in the transportation charges from many of the other gateways; that for many years rates from all defined territories into southwestern territory, including territory affected by the order in question, have been based on St.

Louis, the rates from defined territories being made by adding or deducting certain differentials to or from the St. Louis rate; that the rates from Shreveport have always been a differential under the St. Louis rate; that if said rate is further reduced as is compelled by the order herein complained of, said reduction will of necessity force reductions in rates from St. Louis and the defined territories hereinabove referred to, or the great bulk of said business will flow through Shreveport and traffic flowing in through the other gateways above referred to will be greatly and materially reduced. Your petitioner therefore avers that said order of the Interstate Commerce
117 Commission will effect a reduction in rates on practically all the classes and commodities described in said order to the entire State of Texas, and will effect a reduction in rates thereon to points in many other states in the Southwest and to the Republic of Mexico, all of which reductions in rates will result in a reduction in revenue of your petitioner and the other carriers affected thereby.

XI.

Your petitioner alleges that if said order becomes effective the reduction in the annual revenues of your petitioner will be approximately $812,700.00, most of which will result from the reduction of the commodity rates.

(Leave to amend granted in open Court June 27, 1912.)

Your petitioner alleges that the aggregate, actual, present value of its properties and as shown by its books is not less than $95,802,800.00; that the net earnings of your petitioner for the year ending June 30, 1911, after deducting interest on a portion of its bonded debt of $55,053,352.00 were $992,844.03, and that based upon its earnings and expenses from July 1, 1911, to February 1, 1912, petitioner is informed and believes, and on such information and belief allege- the fact to be, that its net earnings, after deducting the interest on bonded debt as aforesaid, will not exceed $854,524.12. Your petitioner therefore avers that the reductions made by the order herein complained of will not permit it to earn a reasonable or just return upon the value of its properties as alleged, and will amount to a confiscation thereof, and will operate to deprive it of its property without due process of law.

118 XII.

Wherefore, in view of the premises and the matters and things hereinbefore set forth, this petitioner says:

(1) That the order of the Interstate Commerce Commission made in said cause No. 3918 fixing commodity rates upon the lines of your petitioner was made without power or authority either directly or indirectly conferred upon the Interstate Commerce Commission, because your petitioner says that, while under subdivision 3 of Section 8 of Article 1 of the Constitution of the United States the Congress of the United States has power "to regulate commerce with foreign nations, among the several states and with the Indian tribes," the tenth amendment of the Constitution of the United States pro-

vides that "the powers not delegated to the United States by the Constitution nor prohibited by it to the states are reserved to the states respectively or to the people," and petitioner says that, while by said provisions power was conferred upon Congress to regulate interstate and foreign commerce and commerce with the Indian tribes, no power was conferred to regulate or interfere with intrastate commerce, and that this lack of power was fully recognized in the Act to Regulate Interstate Commerce as originally enacted and subsequently amended.

That by the first section of the Act to Regulate Commerce, it is provided "that the provisions of this Act shall apply to any corporation, * * * to any common carrier, or carriers, engaged in the transportation of passengers or property wholly by
119 railroad, * * * from one state or territory of the United States, * * * to any other state or territory of the United States, * * * or from any place in the United States to an adjacent foreign country, etc." Your petitioner avers that this provision means that all the provisions in this Act to Regulate Commerce are limited to the commerce mentioned in this section, and respectfully show- that this is made more evident by the proviso which is added to the first section, which declares "That the provisions of this Act shall not apply to the transportation of passengers or property * * * wholly within one state, etc."; whereby it is provided, as your petitioner avers that none of the provisions, including the provision against discrimination, shall apply in any manner whatsoever to the transportation of property wholly within one state, and that when said Act was so amended as to confer upon the Interstate Commerce Commission power, after finding that any rates or charges, classifications, regulations or practices whatsoever, were unjust and unreasonable, or unjustly discriminatory or unduly prejudicial or preferential, or otherwise in violation of any provision of the Act to prescribe what would be just and reasonable, individual or joint rate, or rates, classifications, regulations or practices to be thereafter followed, that no power or authority was thereby conferred upon the Interstate Commerce Commission, or attempted to be conferred upon the Interstate Commerce Commission to in any way prescribe rates, regulations or practices to be observed by common carriers with reference to transportation of property wholly within one state; and your petitioner avers that it
120 is informed and believes, and charges the fact to be, that the order made by said Interstate Commerce Commission in said cause 3918, fixing commodity rates upon lines of your petitioner, was made without authority or power vested in said Commission to make the same, and is in violation of the Act to Regulate Commerce and the amendments thereof, and of the provisions of the Constitution of the United States, as hereinbefore set forth, and is therefore void.

(2) That said order of said Interstate Commerce Commission is, for the reasons hereinbefore set forth, unreasonable and unjust and, as no power or authority is conferred upon the Interstate Commerce Commission to make or promulgate or enforce any order that is unreasonable or unjust, said order is therefore void.

(3) Said order, in so far as same undertakes to fix and direct the installation of commodity rates upon the lines of your petitioner, is invalid and void for the reason that there was no evidence before said Interstate Commerce Commission that the commodity rates complained of were unjust or unreasonable in and of themselves, and the order of said Interstate Commerce Commission wholly fails to find that said rates were unreasonable in and of themselves, and wholly fails to find that the commodity rates directed by the said commission to be installed by your petitioner are reasonable within themselves, nor was there any evidence before the Interstate Commerce Commission by which said Commission could find that the rates so ordered to be installed were just or reasonable within themselves.

(4) That, for the reasons hereinbefore set forth, said order
121 of said Interstate Commerce Commission deprives petitioner, of its property without due process of law and is the taking of private property for public use without just compensation in violation of the fifth amendment of the Constitution of the United States, and is therefore void.

XIII.

Petitioner says that, as hereinbefore alleged, said order of the Interstate Commerce Commission becomes effective by its terms on the 1st day of June, 1912, and that if petitioner is compelled to install and enforce the rates therein provided for, it will suffer irreparable damage.

Wherefore, your petitioner prays that due service of this petition be made on respondent herein, commanding it to answer the matter thereof (but not under oath, answer under oath being expressly waived); that notice of the application for injunction hereby made be duly served on the respondent, on the Attorney General of the United States and on the Interstate Commerce Commission; that an immediate order restraining the enforcement of said order of the Interstate Commerce Commission be made, and an order of temporary injunction restraining the enforcement of said order of the Interstate Commerce Commission pending final hearing of this cause, and that on such final hearing the said order of said Commission of date March 11, 1912, be in all things enjoined and set aside and held for naught; and that the Interstate Commerce Commission, its members, agents, attorneys, servants and representatives be forever enjoined from enforcing said order or taking
122 any steps or instituting any proceedings for the enforcement thereof; that said rates so established by the Commission be declared to be unjust and unreasonable; and petitioner prays for general and special relief as the equities of the case may warrant.

HENRY G. HERBEL,
Solicitor for Petitioner.

123 STATE OF TEXAS,
County of Dallas, ss:

I, E. L. Sargent state upon oath that I am the General Fr't Agent of the Texas & Pacific Railway Company, petitioner in the above

entitled and numbered cause, and as such am authorized to make this affidavit; that all allegations of fact set forth in said petition are true, and where alleged upon information and belief I believe them to be true.

(Signed) E. L. SARGENT.

Sworn and subscribed by the said E. L. Sargent before me, the undersigned authority, this the 14th day of May, A. D. 1912.

[NOTARIAL SEAL.] (Signed) E. M. BECKWITH,
Notary Public, Dallas County, Texas.

My commission expires June 1, 1913.

124 EXHIBIT A.

Opinion No. 1813.

Before the Interstate Commerce Commission.

No. 3918.

J. J. MEREDITH, SHELBY TAYLOR, and HENRY B. SCHREIBER, Constituting the Railroad Commission of Louisiana,
v.
ST. LOUIS SOUTHWESTERN RAILWAY COMPANY et al.

Decided March 11, 1912.

Report and Order of the Commission.

125 No. 3918.

J. J. MEREDITH, SHELBY TAYLOR, and HENRY B. SCHREIBER, Constituting the Railroad Commission of Louisiana,
v.
ST. LOUIS SOUTHWESTERN RAILWAY COMPANY et al.

Submitted January 16, 1912. Decided March 11, 1912.

The rates from Shreveport, La., to points in eastern Texas are higher than are maintained from Dallas, Houston, and other cities within Texas to such points under substantially similar circumstances and conditions. This complaint attacks the rates from Shreveport as unreasonable and as discriminatory when compared with Texas intrastate rates of the same carriers; Held,

1. That the present class rates out of Shreveport to certain points in Texas on the Texas & Pacific Railway, and on the Houston, East & West Texas Railway, are unreasonable, and reasonable rates are prescribed for the future.
2. That the present relation of rates gives an undue preference to the Texas cities in question and effects an unlawful discrimination against Shreveport, and the carriers ordered to cease and

desist from charging higher rates upon any commodity from Shreveport to Dallas or Houston or points intermediate thereto than are contemporaneously charged by them for the carriage of such commodity to equidistant points from Houston or Dallas toward Shreveport.

3. That if a state, by the exercise of its lawful power, establishes rates which the interstate carrier makes effective upon state traffic, that carrier does so with the full knowledge that the federal government requires it to apply such rates under like conditions upon interstate traffic. To say that an interstate
126 carrier may discriminate against interstate commerce because of the order of a state commission would be to admit that a state may limit and prescribe the flow of commerce between the states.
4. That section 3 of the act, forbidding undue discrimination in favor of or against any person or locality, applies not only as to two interstate hauls but also as to two hauls one of which is interstate and the other intrastate, and the fact that the carrier's rates in the latter case are established by a state commission does not relieve the carrier of the paramount duty, which rests upon it irrespective of its obligation to the state, to so adjust its rates that, as to interstate traffic, justice will be done between communities regardless of state lines. The effective exercise of its power affecting interstate commerce makes necessary the assertion of the supreme authority of the national government, and Congress has appropriately exercised this power in the provisions of the act touching discrimination.
5. That the provision in section 1 that the act shall not apply to commerce wholly within a state was intended as a recognition of the fact that Congress was not assuming to regulate transportation entirely within the borders of a state and does not by the broadest construction justify the inference that an interstate carrier may pursue a policy of rate making within a state that would affect unlawfully commerce among the states and thus violate the express prohibition of the act against discrimination affecting interstate commerce.
6. That the policy of denying to Shreveport similar privileges in the concentration of cotton as are accorded to Texas cities is also discriminatory, and the carriers will be ordered to make applicable at Shreveport whatever lawful practices obtain in this connection at Texas points on defendant's lines under like condition.

Walter Guion, R. G. Pleasant, W. M. Barrow, J. J. Meredith, George T. Atkins, Jr., and Luther M. Walter for complainants.

Baker, Botts, Parker & Garwood, H. A. Scandrett, and F. C. Dillard for Houston & Shreveport Railway Company and Houston, East & West Texas Railway Company.

S. H. West, E. B. Perkins, Hiram Glass, W. F. Murray, and Roy F. Britton for St. Louis Southwestern Railway Company; St. Louis

Southwestern Railway Company of Texas; and Eastern Texas Railroad Company.

127 A. S. Coke, A. H. McKnight, and J. L. West for Missouri, Kansas & Texas Railway Company of Texas.

J. S. Hershey for Gulf, Colorado & Santa Fe Railway Company; Texas & Gulf Railway Company; and Gulf & Interstate Railway Company.

T. J. Freeman, H. G. Herbel, and N. M. Leach for Texas & Pacific Railway Company and International & Great Northern Railroad Company.

John A. Smith for New Orleans Cotton Exchange and New Orleans Board of Trade, interveners.

C. W. Hayward for New Orleans Board of Trade, Limited, and Wholesale Grocers' Association of New Orleans, interveners.

H. H. Haines for Galveston Commercial Association, interveners.

R. B. Walker for Jefferson, Tex., interests, interveners.

T. L. Torrans for Torrans Manufacturing Company, intervener.

J. T. Webster for cotton shipping interests of Pittsburg, Tex., interveners.

Leo Krouse for Texarkana Board of Trade, intervener.

E. W. Anderson for Monroe Progressive League, intervener.

E. S. Hicks for Tenaha, Tex., interests, interveners.

E. H. Carter and J. L. Williams for east Texas shippers, interveners.

W. R. Crawford for Shelby county, Tex., interests, interveners.

H. C. Wiley for Garrison, Tex., interests, interveners.

J. L. Chadswick for Penola county, Tex., interests, interveners.

Report of the Commission.

LANE, *Commissioner:*

This proceeding places in issue the right of interstate carriers to discriminate in favor of state traffic and against interstate traffic. The gravamen of the complaint is that the carriers defendant make rates out of Dallas and other Texas points into eastern Texas which are much lower than those which they extend into Texas from Shreveport, La. A rate of 60 cents carries first class traffic to the eastward from Dallas a distance of 160 miles, while the same rate of 60 cents will carry the same class of traffic but 55 miles into Texas from Shreveport. For further illustration of the rate situation reference is made to the appendix of this report.

128 The railroad commission of Louisiana has brought this proceeding under direction of the legislature of that state for two purposes: (1) To secure an adjustment of rates that will be just and reasonable from Shreveport into Texas, and (2) To end, if possible, the alleged unjust discrimination practiced by these interstate railroads in favor of Texas state traffic and against similar traffic between Louisiana and Texas.

The railroads deny that the rates out of Shreveport are unreasonable, but place their defense mainly upon the proposition that

they are compelled by the railroad commission of Texas to effect the discrimination here involved.

Policy of the Texas Commission.

The railroad commission of Texas, while not made a party to this proceeding, was notified of the hearing but was not represented thereat. The position which it takes, however, appears from the following letter which was incorporated in the record:

"AUSTIN, TEXAS, *September* 12, 1911.

Mr. H. B. Pitts, Sec'y Progressive League, Marshall, Texas.

DEAR SIR: We beg to acknowledge the receipt of your letter of the 9th inst. with which you inclose letter from Mr. A. T. Kahn, of Shreveport, to Mr. W. L. Martin, of your city, with reference to securing a reduction of rates on classes from Shreveport, and we note your request for a statement from this commission in order that you may properly understand the matter involved, and in reply you are advised:

For the rates referred to from Shreveport to Texas points to be reduced would, in the opinion of this commission, be very much against the interests of the Texas jobber whom it has been the endeavor of this commission to protect, and by way of explanation we will state:

Shreveport enjoys now, and has for years past, very low carload rates from northern and eastern points, much lower than the carload rates on the same commodities from the same points to Texas jobbing points. These carload rates in, plus their local rates out, to Texas points gave them, of course, an advantage over the Texas jobber, and to offset this the commission adopted an adjustment of rates which you will find on page 263 of our nineteenth annual report, copy of which is being mailed to you under another cover. For the local rates to be now reduced from Shreveport to Texas
129 points would tend to counteract the effect of the commission's action, and to place the Texas jobber at the same disadvantage under which he previously labored.

Yours respectfully, ALLISON MAYFIELD,
Chairman."

This letter supports on the one hand the theory of the Louisiana Commission that the Texas Commission is acting in loco parentis to the jobbing interests of Texas, and on the other hand supports the theory of some of the carriers justifying the higher local rates out of Shreveport upon the ground that the through rate from point of origin in the north and east to Texas, when made up of the rate to Shreveport plus the local out of Shreveport, is not unreasonable. (See appendix.)

This latter contention has been made before the Commission at various times, and we have uniformly held that a carrier could not impose an unreasonably high local rate upon any community because of the advantages that it properly enjoyed for securing low

inbound rates. See Commercial Club of Omaha v. C., R. I. & P. Ry. Co., 6 I. C. C. 675; Daniels v. C., R. I. & P. Ry. Co., 6 I. C. C. 458; Eau Claire Board of Trade case, 5 I. C. C., 293; Savannah Bureau of Freight & Transportation case, 8 I. C. C., 377.

It is not the function of a railroad to equalize the commercial advantages of cities. If Shreveport is so situated by reason of her position on the Red River and her proximity to the Mississippi that the railroads serving her are justified in extending to her inbound rates which are lower than those extended to Dallas and other cities in Texas, this is her advantage of which she may take full benefit. The carriers may not say that they will absorb in the outbound rates such advantages as Shreveport has upon her inbound rates. Railroads may assume that they have the right to control the destinies of cities and limit their jobbing territory or expand it as they see fit, but this is not a policy consistent with the theory of governmental regulation. If the inbound rates to Shreveport are compelled by natural conditions the discrimination in her favor is not undue. If, however, this is an artificial relation established by the railroads, it is unlawful. If natural, the railroads certainly should not destroy it. If artificial, it never should have been established and should now be removed. The act to regulate commerce is the outgrowth of a popular conviction that the railroads when unhampered by restrictive law attempted successfully to prescribe and define the chan-
130 nels of commerce in such way as to favor certain localities, industries, and individuals. By the institution of this act Congress substituted for the regulation of trade by common carriers the regulation of common carriers by the government in accordance with certain prescribed rules to be applied as to ascertained conditions. We do not here pass upon the relation between the rates into Shreveport from the north and east and those extended by the carriers to Texas points. If Texas communities have just reason to complain of this relationship which has been created by the carriers, hearing will be given them upon this matter and the full power of the Commission exercised to correct any wrong which may exist in this situation.

There appears to be little question as to the policy of the Texas commission. It is frankly one of protection to its own industries and communities. We find in the early reports of that commission, which are quoted at length in the record, evidences that the Texas commission believed that the interstate carriers operating from the north and the east into Texas were pursuing a policy hostile to the development of that state. The Texas commission was conscious that it was within the power of these interstate carriers to so adjust rates as to make Texas entirely or largely dependent upon other states and thus restrict the growth of her cities and fix the nature of her industries, the employments of her people, and the character of her civilization so far as these depend on economic and industrial conditions. With this thought in mind the Texas commission sought to establish a Texas policy and to make the railroads within that state contribute in the manner believed by her own people to best

subserve their own interests. Accordingly we find in the fifth annual report of that commission (page 5) the following:

"To Texas as a whole it is of the most vital concern that there should be within her limits at proper places jobbing and manufacturing establishments. Besides adding to the citizenship of the state a desirable population and furnishing employment to persons already in our midst and enhancing the taxable values of the state, and, as a consequence, under wisely administered government, aiding in ultimately reducing the rate of taxation, and besides the home market they afford to the tiller of the soil and other producers, including manufacturers, for their products, if men, in Texas, having the capital to engage in a wholesale business or in a manufacturing enterprise, for the success of which natural conditions are favorable, they have as much right to invest their means in
131 such business or enterprise as a man in Illinois or Missouri has to embark in such business or enterprise in his state. Some of the Texas lines of railway, constituting parts of interstate systems of railway interested in long hauls, appear to be hostile to a policy which would foster Texas jobbing and manufacturing interests, while other lines manifestly favor such a policy. Outside cities bring to bear every pressure they can to coerce all Texas lines into a course favorable to their interests and adverse to the interests of Texas cities with respect to jobbing and manufacturing. * * * This commission has always had in mind the securing of relatively just state and interstate rates, with a view of enabling Texas merchants and manufacturers to do business in competition with outsiders."

It was apparently not the prime desire of the Texas commission that rates within the state should be low, but rather that the interstate roads should not make rates so low upon commodities which Texas could supply to herself as could hinder the growth of her cities as manufacturing and distributing centers.

"This commission has often stated to the freight agents and traffic managers in their meetings with it that if the railroad companies engaged in interstate shipment would make and maintain rates which would be fairly compensatory to them on such shipments this commission would do all in its power by its rates to secure them reasonable revenue on their railroad investments in this state, and we now repeat that statement, but this suggestion contemplates good faith on both sides in the making and maintenance of rates." (Fourth annual report, page 19.)

Again we find the thought expressed in the letter from the chairman of the Texas state commission, quoted above, expressed in the report of that commission for 1896 (page 10), wherein it is said:

"The commission did not feel disposed when it gave the notice in the form stated, nor has it ever been inclined to deny to the railroad companies such rates as are reasonably compensatory even though to do so would necessitate an increase in rates; yet as a condition precedent to anything like a general increase in state rates the commission was and is determined that the railroad companies shall show that they received reasonable compensation for

transportation by them of interstate freights in order that it may be seen by the commission that they are not sacrificing their revenues on interstate hauls and seeking to recoup their losses against
132 the people of Texas. * * * In making the demand there was no injustice to the railroads, for, viewed simply as roads operating in the state, it is to their interest to favor our policy of bringing goods from abroad into Texas cities in carload quantities and in distributing them from the jobbing houses in such cities in less-than-carload quantities among the retailers. As the freight charges they receive on local less-than-carload shipments in the state added to what they receive in the division of through rates on carload shipments to the Texas jobber usually amount to more than they receive in the division of through rates on less-than-carload shipments from a jobber outside the state to a retailer in the state; and it can be shown to be to their advantage to pursue a policy favorable to the development of manufacturing in Texas. While by pursuing, along the lines indicated, a course favorable to the upbuilding of Texas jobbing and manufacturing enterprises, the interests of Texas roads considered as such would be subserved, yet, constituting, as some of the Texas roads do, parts of interstate systems, the interests of the systems rather than the interest of the Texas lines are too often regarded. Here lies the main difficulty, in our opinion, in securing a just arrangement of interstate rates. It can be met either by those lines which are not dominated by outside influences taking a firm stand and co-operating with this commission to compel the other lines to act justly toward Texas interests, or, if adjustments can not be made by consent, by the Interstate Commerce Commission, with an intelligent grasp of the situation, when appealed to, making the proper adjustment."

Quotations need not be multiplied to demonstrate that Texas has a policy of her own with respect to the protection of home industry which has been made effective by consistent and vigorous action on the part of her commission. If interstate carriers were determined upon a long-haul policy which tended to make the people of Texas dependent upon the merchants and the manufacturers of other states the Texas commission frankly declared that it would meet this policy in such way as to save the interests of Texas from being at the mercy of these interstate carriers. At the time when these reports were written, from which quotation has been made, it is to be noted that the Interstate Commerce Commission lacked the powers which it now has; rates were unstable, competition was intense by means of rebates, and it is not unfair to say that there was no system of rate-making into the southwest upon which the Texas commission could rely. That interstate rates from northern points are not now so low as to cause the Texas commission to indulge the fears
133 which possessed it in earlier years is made manifest by the fact that it sought before this Commission within two years the reduction of class rates from St. Louis. See R. R. Commission of Texas v. A., T. & S. F. Ry. Co., 20 I. C. C., 463. This was a proceeding in the interest of the consumers and not primarily for the protection of jobbing interests.

That Texas, however, has not abandoned her purpose to retain so much of her trade within her own state as is possible is evidenced by what is known as the Texarkana rate adjustment. See Nineteenth Annual Report, R. R. Commission of Texas, page 263. By this adjustment the normal scale of rates applying upon a large number of articles, including carload and less-than-carload shipments of all articles which are, in carloads, subject to fifth class and class A, B, C, D, and E rates, was reduced by 20 per cent: 1. Between points on the Texas & Pacific Railway and the Denison & Pacific Suburban Railway east of and including Denison, Sherman, and Dallas, but not from Texarkana, Waskom, and intermediate points on the Texas & Pacific Railway. 2. Between points on the Missouri, Kansas & Texas Railway of Texas east of and including McKinney, but not from Jefferson, Waskom, and intermediate points on the Missouri, Kansas & Texas Railway of Texas. 3. Between points on the St. Louis Southwestern Railway of Texas east of and including Sherman, Plano, and Dallas, and north of and including Tyler, but not from Texarkana.

Then follows this significant language:

"Ruling.—Rates provided in this adjustment are not available on shipments to or from Texarkana."

Thus the interior cities of Texas were protected against what was doubtless deemed the unfair competition of Texarkana, a border city, and other similarly situated points.

One illustration of the policy pursued by the Texas commission by which it is claimed advantage is given to Texas cities as against Shreveport is in the matter of the concentration of cotton. We are asked to establish concentration rules at Shreveport upon Texas cotton. The record discloses extensive correspondence upon this question between the railroads and the Texas commission, a portion of which is here given.

"The Honorable Railroad Commission of Texas, Austin, Tex.

GENTLEMEN: We have received requests from cotton men along our line south of Shreveport, also on the Texas & Gulf and Timpson & Henderson, also merchants at Shreveport, for the establishment of a concentrating privilege at Shreveport on cotton from the points indicated.

134 We have hesitated so far to establish any such privilege, feeling that it might not meet with the entire approval of the railroad commission of Texas. However, we are advised that such privilege would give a better market for cotton to the producers along the lines indicated, and as such would be an advantage to the Texas farmer.

Under the circumstances, if you will advise us that you do not disapprove of the plans, we will take steps to see if we can not meet the views of our cotton friends in regard to this feature.

Yours truly,

J. R. CHRISTIAN, *G. F. A.*"

Under date of October 6, 1910, Chairman Mayfield wrote Mr. Christian as follows:

"Referring to your letter of September 15th, with respect to the contemplated establishment by your line of a concentrating privilege at Shreveport on cotton from points on your line south of Shreveport, and also from Texas & Gulf and Timpson & Shreveport points, we beg to advise you that your communication has been duly considered by the commission and we beg to state that the establishment of such an arrangement would not meet with the approval of this commission."

The policy of the Texas commission is, moreover not without opposition within that state. Galveston, which enjoys low water rates, claims that for this reason she is the object of discrimination, a differential having been placed against distribution from that city. The Galveston Commercial Association has brought suit against the Texas railroad commission complaining of this condition. In that suit Galveston has been successful in the lower court, and it was stated at the hearing in this case that if the Supreme Court sustained the lower court it would probably mean a complete readjustment of rates in Texas; that, in fact, it would be necessary for the Texas railroad commission to make its tariffs upon an entirely different plan, and that the railroads would be prepared to suggest new tariffs to the Texas commission which would alter the relation, not only between Galveston and other Texas cities, but between Shreveport and Texas cities.

The Problem Raised.

The petition of the complainants is that this Commission "establish the same basis of rates of transportation between Shreveport and east Texas points as are accorded by defendants to Texas competitors of Shreveport interests in the same line of business for the same distances."

135 With this petition we can not comply unless such power has been granted us under the first, third, and fifteenth sections of the act to regulate commerce. We have no power to require an interstate carrier to put into effect from an interstate point a state-made schedule of rates; our power is limited to condemning unreasonable rates and fixing maximum rates that are in our judgment just and reasonable. Therefore we may not say that because a carrier has in effect state-made rates upon state traffic such rates shall be established by it upon interstate business, for, to put the matter bluntly, the rates fixed by a state commission are not prescribed as a standard by the act of Congress governing interstate rates of transportation. The Texas rates as such, therefore, we may not prescribe. If, however, they stand the test of reasonableness they may be adopted.

Passing then to the question of discrimination, has this Commission the power to say that whatever rates an interstate carrier makes between points in Texas shall not be exceeded for the same distance under like conditions between Shreveport and Texas points? In other words, may a carrier engaged in interstate commerce dis-

criminate against a city beyond the border of a state by imposing upon that city's traffic rates which deny its shippers access upon equal terms to the communities of an adjoining state?

This is an appeal to the powers lodged in this Commission under the third section of the act—that provision which is aimed at the destruction of undue preference and advantage. We thus meet directly the most delicate problem arising under our dual system of government. Congress asserts its exclusive dominion over interstate commerce; the state asserts its absolute control over state commerce. The state for its own purposes establishes rates designed to protect its own communities and promote the development of its own industries. These rates are adopted by the interstate carriers upon state traffic but are not adopted upon interstate traffic. Thus arises a discrimination in favor of communities within the state, and interstate commerce suffers a corresponding disadvantage. May this Commission end such discrimination by saying to the interstate carrier: "You may not distinguish between state and interstate traffic transported under similar conditions. If the rates prescribed for you by state authority are not compensatory upon this specific traffic as to which discrimination is found the burden rests upon you, irrespective of your obligation to the state, to so adjust your rates that justice will be done between communities regardless of the invisible state line which divides
136 them." To which we are compelled to answer, that the effective exercise of its power regarding interstate commerce makes necessary the assertion of the supreme authority of the national government, and that the Congress has appropriately exercised this power in the provisions of the act to regulate commerce touching discrimination.

Power and Policy of Congress.

The theory of our constitution is that a state may not live unto itself alone, either politically or commercially. Under the articles of confederation the several states reserved to themselves certain powers which in their exercise made necessary "a more perfect union." This was established under the constitution, in which, as an outgrowth of experience, it was provided that Congress should have the power "to regulate commerce with foreign nations and among the several states." It is unnecessary to trace the growth and expansion of the national power under this provision of the organic law. With almost each decade some problem has arisen which has brought from the Supreme Court of the United States a fuller interpretation of this power granted to Congress, and underneath each one of these decisions may be found the fundamental doctrine of governmental necessity. The power granted to regulate a commerce by wagon and the sailing ship has been found adequate for the necessities of a national life to which the railway and the telegraph are essential. Under the protection and authority of the federal government our commerce has known no state lines, we have enjoyed freedom of trade between the people of the various states, and our railroad systems have been constructed to convey a national

commerce. While chartered by the states they have become the interstate highways of the United States. They are the roads of the whole people and not of any part or section of the people. Congress has commanded that all carriers which engage in interstate commerce shall be linked together as through routes; that they shall provide reasonable facilities for operating such routes; that they shall establish and enforce just and reasonable classifications of property for transportation with reference to which rates, tariffs, regulations, or practices may be prescribed (section 1); that they shall construct switch connections with any lateral, branch line of railroad, or the private sidetrack of any shipper tendering interstate traffic for transportation (section 1); that they shall not discriminate between persons (section 2), or between connecting lines (section 3); that in time of war or threatened war
137 preference shall be given to military traffic; that the books and files of such carriers shall be open to the inspection of the Federal Commission (section 20); that the Commission may have power to prescribe just and reasonable rates, classifications, regulations, and practices; fix the division of joint rates in certain cases (section 15); prescribe a uniform system of accounts and the manner of keeping the same (section 20); and that the initial carrier shall be responsible for loss or damage to property caused by it or by other carriers over whose lines such property may pass (section 20).

By all these provisions of the law, as by others, Congress has clearly manifested its purpose to unite our railroads into a national system. The law acts only on those which do an interstate business; but in the conveying of property destined from a point in one state to a point in another this brings within the control of Congress all such carriers as do not exclude themselves from participating in such traffic.

"Whilst every instrumentality of domestic commerce is subject to state control, every instrumentality of interstate commerce may be reached and controlled by national authority so far as to compel it to respect the rules for such commerce lawfully established by Congress. (Mr. Justice Harlan, Northern Securities case, 193 U. S., 197.)

While with reference to some of them (instrumentalities of commerce), which are local and limited in their nature or sphere of operation, the states may prescribe regulations until Congress intervenes and assumes control of them; yet, when they are national in their character, and require uniformity of regulation affecting alike all the states, the power of Congress is exclusive. (Mr. Justice Field in Gloucester Ferry case, 114 U. S., 203, 204.)"

Construction of the Law.

The power of Congress being unquestioned, we find that as carriers of interstate commerce the defendants under the act (section 3) may not give any undue or unreasonable preference or advantage to any locality or any particular description of traffic in any respect whatsoever, or subject any locality, or any particular description of traffic, to any undue or unreasonable prejudice or dis-

advantage in any respect whatsoever. Does this mean that as between two points doing interstate business the interstate carrier shall not prefer one over the other, but that as between a point in one state and a point in another state the interstate carrier may unduly discriminate so as to prefer a point in one state as
138 against the other? If this is the meaning of the section, the law has recognized that an interstate carrier may properly discriminate within a state as against interstate commerce. Such construction is, however, entirely inconsistent with the letter of the statute and with its purpose. A clearer and fairer, and to our minds the only reasonable reading of the law, is one which credits Congress with the intention of stopping all undue discrimination by interstate carriers. It may be said without exaggeration that it is the paramount duty of interstate carriers, under this act to avoid discrimination. The penalties placed against any course of policy leading to such result are severe. There can be no justification for granting to one locality an advantage over another not arising out of difference in transportation conditions. The orders of a state commission enforcing a discrimination against interstate commerce are not acceptable under the law.

"Even though a power exerted by a state, when inherently considered, may not in and of itself abstractly impose a direct burden on interstate commerce, nevertheless such exertion of authority will be a direct burden on such commerce if the power as exercised operates a discrimination against that commerce, or, what is equivalent thereto, discriminates against the right to carry it on. (Mr. Chief Justice White, Pullman Company case, 216 U. S., 65.)

No state by the exercise of, or by the refusal to exercise, any or all of its powers may substantially discriminate or directly regulate interstate commerce or the right to carry it on. (Mr. Justice McKenna in Oklahoma v. Kansas Natural Gas Co., 221 U. S., 261.)

We come then to the question whether these acts are within the power of Congress under the commerce clause of the Constitution, considering that they are not confined to vehicles used in moving interstate traffic, but embrace vehicles used in moving intrastate traffic. The answer to this question depends upon another, which is, Is there a real or substantial relation or connection between what is required by these acts in respect of vehicles used in moving intrastate traffic and the object which the acts obviously are designed to attain, namely, the safety of interstate commerce and of those who are employed in its movement? Or, stating it in another way: Is there such a close or direct relation or connection between the two classes of traffic, when moving over the same railroad, as to make it certain that the safety of the interstate traffic and of those who are employed in its movement will be promoted in a real or substantial sense by applying the requirements of
139 these acts to vehicles used in moving the traffic which is intrastate as well as to those used in moving that which is interstate? If the answer to this question, as doubly stated, be in the affirmative, then the principal question must be answered in the same way. And this is so, not because Congress possesses any power to regulate intrastate commerce as such, but because its power to

regulate interstate commerce is plenary and competently may be exerted to secure the safety of the persons and property transported therein and of those who are employed in such transportation, no matter what may be the source of the dangers which threaten it. That is to say, it is no objection to such an exertion of this power that the dangers intended to be avoided arise, in whole or in part, out of matters connected with intrastate commerce. (Mr. Justice Van Devanter, Safety Appliance case, 222 U. S., 20, 26.)"

If a state by the exercise of its lawful power establishes rates which the interstate carrier makes effective upon state traffic, such carrier does so with the full knowledge that the federal government requires it to apply such rates under like conditions upon interstate traffic.

Language of the Act.

It is further said that the carriers within the state of Texas are protected from the provisions of the act to regulate commerce by that clause in its first section, reading:

"Provided, however, That the provisions of this act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property wholly within one state and not shipped to or from a foreign country from or to any state or territory as aforesaid."

This language was intended as a recognition of the fact that Congress by this act was not assuming to regulate transportation entirely within the borders of a state. It does not by the broadest construction justify the inference that an interstate carrier may pursue a policy of rate making within a state that would affect unlawfully commerce among the states. The phrase "among the several states," as recently defined by Mr. Justice Van Devanter with nice precision, "marks the distinction for the purpose of governmental regulation between commerce which concerns two or more states and commerce which is confined to a single state and does not affect other states, the power to regulate the former being conferred upon Congress and the regulation of the latter remaining with the states severally." Mondou v. N. Y., N. H. & H. R. R. Co., 223 U. S., 1, decided January 15, 1912. It is not merely the
140 commerce which is confined to a single state which is state commerce, but that which "does not affect other states." The state goes untouched as to its railroad policies so long as they do not trench upon the interstate field. Congress does not say that state rates shall be reasonable or that rebates upon state traffic shall be unlawful or that discrimination between localities within the state shall not be allowed. To reach these matters, so far as they do not affect interstate commerce, is the prerogative of the state, which is recognized and protected by the language of the act quoted.

But, as to the nation, Congress has prohibited carriers of interstate commerce from giving undue preference or advantage to one community over another. To say that this prohibition permits such carriers to exclude a city within the state of Louisiana from doing business upon equal terms with the cities in Texas is to distort

advantage in any respect whatsoever. Does this mean that as between two points doing interstate business the interstate carrier shall not prefer one over the other, but that as between a point in one state and a point in another state the interstate carrier may unduly discriminate so as to prefer a point in one state as
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regulate interstate commerce is plenary and competently may be exerted to secure the safety of the persons and property transported therein and of those who are employed in such transportation, no matter what may be the source of the dangers which threaten it. That is to say, it is no objection to such an exertion of this power that the dangers intended to be avoided arise, in whole or in part, out of matters connected with intrastate commerce. (Mr. Justice Van Devanter, Safety Appliance case, 222 U. S., 20, 26.)"

If a state by the exercise of its lawful power establishes rates which the interstate carrier makes effective upon state traffic, such carrier does so with the full knowledge that the federal government requires it to apply such rates under like conditions upon interstate traffic.

Language of the Act.

It is further said that the carriers within the state of Texas are protected from the provisions of the act to regulate commerce by that clause in its first section, reading:

"Provided, however, That the provisions of this act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property wholly within one state and not shipped to or from a foreign country from or to any state or territory as aforesaid."

This language was intended as a recognition of the fact that Congress by this act was not assuming to regulate transportation entirely within the borders of a state. It does not by the broadest construction justify the inference that an interstate carrier may pursue a policy of rate making within a state that would affect unlawfully commerce among the states. The phrase "among the several states," as recently defined by Mr. Justice Van Devanter with nice precision, "marks the distinction for the purpose of governmental regulation between commerce which concerns two or more states and commerce which is confined to a single state and does not affect other states, the power to regulate the former being conferred upon Congress and the regulation of the latter remaining with the states severally." Mondou v. N. Y., N. H. & H. R. R. Co., 223 U. S., 1, decided January 15, 1912. It is not merely the
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But, as to the nation, Congress has prohibited carriers of interstate commerce from giving undue preference or advantage to one community over another. To say that this prohibition permits such carriers to exclude a city within the state of Louisiana from doing business upon equal terms with the cities in Texas is to distort

the plain meaning of the act and make the regulation of interstate commerce farcically ineffective. To say that interstate carriers may so discriminate because of the orders of a state commission, is to admit that a state may limit and prescribe the flow of commerce between the states.

And if one state may exercise its power of fixing rates so as to prefer its own communities all states may do so. There would thus arise a commercial condition more absurd and unbearable than that which obtained prior to the constitution when each state sought to devise methods by which its commerce could be localized. How utterly incongruous the result if the interstate carriers of Ohio should be allowed to make rates within that state which would so confine the commerce of its communities as to exclude on equal terms that of Buffalo or of Pittsburgh; and what national system of regulation could there be if interstate commerce could be discriminated against after such fashion? Manifestly Congress has dealt with the railroads of the country as servants of a national commerce and has accordingly laid down the rule of fair play to which they must conform.

Congress passed this act with full knowledge and profound appreciation of those decisions of the Supreme Court in which it had been held that state commerce was that wholly within a state "and not affecting interstate commerce," as is fully shown by the Cullom report of 1886 out of which grew the act to regulate commerce. "While the decisions of the United States Supreme Court," says this report, "may not perhaps afford as conclusive an answer to this question (What is interstate commerce?) as to the preceding one, we believe they indicate very clearly what the view of that
141 tribunal will be when it is called upon to more closely draw the line between that commerce which is wholly subject to state authority and that which is exclusively under the jurisdiction of Congress."

The report quotes this language from Gibbons v. Ogden:

"It is not intended to say that these words comprehend that commerce which is completely internal, which is carried on between man and man in a state, or between different parts of the same state, and which does *not extend to or affect other states.* (The italics are those of the report.) * * * But in regulating commerce with foreign nations the power of Congress *does not stop* at the *jurisdictional lines* of the several states. It would be a *very useless power* if it could not *pass those lines.* * * * If Congress has the power to regulate it, that power must be exercised *wherever the subject exists.* If it exists within the states, if a foreign voyage may commence or terminate at a port within a state, then the power of Congress may be exercised within a state. *This principle is, if possible, still more clear when applied to commerce 'among the several states.'* * * * The power of Congress, then, whatever it may be, must be exercised *within the territorial jurisdiction* of the several states.

After quoting other decisions, the report continues:

"There has been some dispute as to the extent to which the states may go in imposing regulations upon the instrumentalities of com-

merce which may *indirectly* affect interstate commerce until Congress sees fit to prescribe a uniform plan of regulation."

Then is cited with approval language from the decision in Hall v. De Cuir, 95 U. S., 485, which involved an act of the state of Louisiana prohibiting discrimination by common carriers of passengers between persons of different race or color.

"The act was declared to be an interference with interstate commerce, even if construed to be limited to that part of the carriage within the state. Upon this point the court said: 'While it purports only to control the carrier when engaged within the state, it must necessarily influence his conduct to some extent in the management of his business throughout his entire voyage. His disposition of passengers taken up and put down within the state, or taken up to be carried without, can not but affect in a greater or less degree those taken up without and brought within, and sometimes those taken up and put down without. * * * It was to meet just such a case that the commercial clause in the constitution was adopted."

Again the report quotes from Brown v. Houston, 114 U. S., 622.

142

"In short, it may be laid down as the settled doctrine of this court at this day that a state can no more regulate or impede commerce among the several states than it can regulate or impede commerce with foreign nations."

The committee comes to certain conclusions which it says have been conclusively established from the decisions to which reference has been made. Among these conclusions is this:

"Commerce among the states includes the transportation of persons and property from a place in one state to a place in another state. Interstate Commerce is all commerce that concerns more states than one, and embraces all transportation which begins in one state and ends in or passes through another state."

In presenting the act to regulate commerce to the Senate the Cullom Committee said:

"The provisions of the bill are based upon theory that the paramount evil chargeable against the operation of the transportation system of the United States as now conducted is unjust discrimination between persons, places, commodities, or particular descriptions of traffic. The underlying purpose and aim of the measure is the prevention of these discriminations, both by declaring them unlawful and adding to the remedies now available for securing redress and enforcing punishment, and also by requiring the greatest practicable degree of publicity as to the rates, financial operations, and methods of management of the carriers."

In view of this internal evidence that Congress was not only officially aware, but that its attention had been directly called to those decisions of the Supreme Court touching upon the boundary line between federal and state control, it certainly may not be truthfully said that Congress intended that its own act should be set at naught by an interstate carrier upon the ground that the discrimination effected against interstate commerce arose out of the rates and practices in effect on commerce wholly within a state.

An interstate carrier must respect the federal law, and if it is also subjected to state law it must respect that in so far as it can without doing violence to its obligations under the national authority. Before us are carriers which undeniably discriminate directly against interstate traffic. To this charge they plead that all they have done was to obey the orders of a state commission, as against which they were helpless. They appealed to no court for relief, nor to
143 this Commission. When the state of Louisiana after years of endurance makes complaint to this body these carriers make no showing of the reasonableness of their rates other than that heretofore dealt with—traffic adjustment equalizing gateways—and even in this defense all the carriers do not join. The class rates of the Texas commission within the distances here involved are not too low. This the carriers themselves do not urge. Yet they have maintained higher rates from Shreveport, the interstate point. While the Texas commission has evidenced a policy of home protection for its own state cities, there is every evidence that the carriers moving into and within Texas accepted this policy as their own, claiming that not to have adopted it would have led to reprisal on the part of the state authorities. Such conditions may not continue under this act. The interstate carrier which adopts a policy, even under state direction, that makes against the interstate movement of commerce must do so with its eyes open and fully conscious of its responsibilities to the federal law which guards commerce "among the states" against discrimination.

It is suggested that the exercise of such power to end discrimination between rates within a state and rates to interstate points must surely lead to a conflict in which the jurisdiction of one sovereignty or the other must give way. To this suggestion the one and sufficient answer is that when conditions arise which in the fulfillment of its obligation and the due exercise of its granted power to regulate commerce among the states make such course necessary the national government must assume its constitutional right to lead.

Conclusions.

We find:

(1) That the present class rates out of Shreveport to points in Texas on the Texas & Pacific Railway included in the following table, and to points in Texas on the Houston, East & West Texas Railway, are unjust and unreasonable.

(2) That just and reasonable class rates on these lines of railroad should not exceed the following:

144 On the Texas & Pacific Railway.

From Shreveport, La., to—	Distance. Miles.	Class rates in cents per 100 pounds.									
		1	2	3	4	5	A	B	C	D	E
Waskom, Tex	22.7	18	16	14	12	10	11	9	7	6	5
Jonesville, Tex	26.0	19	17	15	13	11	12	10	8	7	6
Scottsville, Tex	34.1	22	20	18	16	14	15	13	10	8	7
Marshall, Tex	42.0	24	22	20	18	16	17	14	11	9	7
Hallsville, Tex	55.2	29	27	25	23	19	20	17	14	12	9
Longview, Tex	65.7	32	29	27	25	20	21	18	15	13	10
Willow Springs, Tex	69.1	34	31	29	27	21	22	19	16	13	10
Camps, Tex	72.6	35	32	30	28	22	23	20	17	14	11
Gladewater, Tex	78.2	37	34	32	30	23	24	21	18	14	11
Big Sandy, Tex	88.3	40	37	35	32	24	25	22	19	15	12
Hawkins, Tex	94.0	42	39	36	33	25	26	23	20	16	13
Crow, Tex	100.5	44	41	38	35	26	27	24	21	16	13
Mineola, Tex	111.5	48	45	41	39	28	29	26	23	17	14
Grand Saline, Tex	124.6	52	48	44	42	30	31	28	25	18	15
Edgewood, Tex	135.1	54	50	45	43	31	32	29	26	19	16
Wills Point, Tex	142.3	56	52	47	45	32	33	30	26	19	16
Elmo, Tex	151.4	58	54	49	47	33	34	31	27	19	16
Terrell, Tex	157.9	60	56	51	49	34	35	32	28	20	16
Lawrence, Tex	161.9	61	56	51	49	35	36	33	28	20	16
Forney, Tex	169.4	63	58	52	50	36	37	34	29	20	16
Mesquite, Tex	177.6	65	60	54	52	37	38	35	20	21	16
Orphans Home, Tex	182.3	66	61	55	53	37	38	35	30	21	16

On the Houston, East & West Texas Railway.

From Shreveport, La., to—	Distance. Miles.	Class rates in cents per 100 pounds.									
		1	2	3	4	5	A	B	C	D	E
Joaquin, Tex	42.8	25	23	21	19	17	18	15	12	10	8
Teneha, Tex	54.3	29	27	25	23	19	20	17	14	12	9
Timpson, Tex	63.9	32	29	27	25	20	21	18	15	13	10
Garrison, Tex	72.3	35	32	30	28	22	23	20	17	14	11
Appleby, Tex	83.3	38	35	33	30	23	24	21	18	14	11
Nacogdoches, Tex	92.4	41	38	35	32	25	26	23	20	16	13
Angelina, Tex	104.3	45	42	39	36	27	28	25	22	17	14
Lufkin, Tex	112.5	48	45	41	39	28	29	26	23	17	14
Renova, Tex	127.6	52	48	44	42	30	31	28	25	18	15
Corrigan, Tex	137.7	55	51	46	44	32	33	30	26	19	16
Moscow, Tex	143.2	56	52	47	45	32	33	30	26	19	16
Valda, Tex	147.0	57	53	48	46	33	34	31	27	19	16
Leggett, Tex	151.0	58	54	49	47	33	34	31	27	19	16
Livingston, Tex	159.2	60	56	51	49	34	35	32	28	20	16
Goodrich, Tex	167.3	62	57	51	49	35	36	33	28	20	16
Shepherd, Tex	175.4	64	59	53	51	36	37	34	29	21	16
Cleveland, Tex	187.5	67	62	56	54	38	39	36	30	21	16
Midline, Tex	194.2	69	64	58	56	39	40	37	31	22	17
New Caney, Tex	203.4	71	65	58	56	40	41	37	31	22	17
Pauli, Tex	208.8	72	66	59	57	40	41	38	32	22	17
Humble, Tex	213.6	73	67	59	57	41	42	38	32	22	17
Houston, Tex	230.7	77	70	60	58	43	44	39	33	23	17

(3) That such carriers maintain higher rates from Shreveport to points in Texas than are maintained from cities within Texas to such points under substantially similar conditions and
145 circumstances.

(4) That thereby an unlawful and undue preference and advantage is given to such Texas cities, and a discrimination that is undue and unlawful is effected against Shreveport.

(5) That an order should be issued directing said carriers to establish and maintain rates no higher than those above found to be reasonable out of Shreveport to the Texas points named under western classification.

(6) That the Texas & Pacific Railway Company shall cease and desist from charging higher rates upon any commodity from Shreveport into Texas than are contemporaneously charged for the carriage of such commodity from Dallas toward Shreveport for an equal distance.

(7) That the Houston & Shreveport Railroad Company and the Houston, East & West Texas Railway Company shall cease and desist from charging higher rates upon any commodity from Shreveport into Texas than are contemporaneously charged for the carriage of such commodity from Houston toward Shreveport for an equal distance.

It will be the duty of the carriers under such order to duly and justly equalize the terms and conditions upon which they will extend transportation to traffic of a similar character moving into Texas from Shreveport with that moving wholly within Texas. But in effecting such equalization the class scale rates prescribed above shall not be exceeded.

As to the matter of the concentration of Texas cotton at Shreveport specifically dealt with in the complaint we find the carriers pursuing a policy with respect to Texas cotton within Texas which they do not apply to Shreveport. This discrimination is likewise disapproved. Whatever is the practice pursued respecting the concentration of cotton within Texas the carrier shall be ordered to apply at Shreveport, provided the practice adopted shall be one justifiable under the act to regulate commerce and applicable fairly under like conditions elsewhere on the lines of the carriers.

PROUTY, Chairman concurring:

I entirely agree with the conclusion reached in the majority opinion and can add nothing to the argument as there stated. I do, however, wish to refer to one or two of the previous decisions of this Commission as illustrative of my views on this general subject.

This question came before the Commission in much its present form in Reliance Textile & Dye Works v. Ry. Co., 13 I. C. C., 48. In that proceeding the complaint contended that rates from the mills to its dye works, combined with rates from its dye
146 works to points of consumption, were unduly high as compared with similar rates made to and from the dye works of its competitors. One of the rates complained of was that from

certain mills in South Carolina to Augusta. Since this was a state rate and under the jurisdiction of the state commission, the defendants insisted that this Commission could not predicate discrimination on a comparison between this rate and the interstate rate to the factory of the complainant. To this contention the Commission refused to assent, saying:

"To this we can not agree. The same lines participate in all these rates from the mill to the dye works of the complainant and its competitor and from these in turn to the points of consumption. When a discrimination, forbidden by the act to regulate commerce, arises from an adjustment of state and interstate rates, carriers subject to our jurisdiction and participating in the interstate rates can not escape responsibility by claiming that the discrimination is accomplished through a reduction of the state rate so long as that reduction is voluntary. They were answerable for the effect produced by the combination of rates, all of which they control.

* * * * * * *

This must certainly be so where the state rate is voluntarily made, and we think that the same conclusion must finally be reached where the state rate is made by state authority. A state can no more improperly prefer an industry within its borders as against an industry located without by the imposition of an improper freight rate than the Southern Railway can unduly prefer that industry in its own interest."

In that proceeding the Commission failed to find the fact of discrimination, and no order was therefore required.

In Saunders v. Southern Express Co., 18 I. C. C., 415, fish rates from Mobile as compared with those from Pensacola to certain points in the state of Alabama were before us. The Southern Express Company had originally established voluntary rates, thereby creating a relation in transportation charge between the Mobile and Pensacola fish markets to interior points of consumption. The railroad commission of Alabama had established a mileage scale of express charges for the transportation of fish and some other commodities, and the application of this scale had the effect to reduce rates materially from Mobile, whereupon Pensacola complained of the discrimination.

147 There was no claim of any intent to prefer Mobile to Pensacola; the rates in question were those of the Alabama commission applicable over all lines. To hold that those rates were unduly low would be of necessity to hold that the Alabama schedule as a whole was unduly low, and there was no evidence upon which we could properly do that. Upon the other hand, it did not seem clear that the rates from Pensacola were unduly high, or certainly that rates as low as those prescribed by the Alabama commission, if applied from Pensacola, might not be unduly low.

If we made an order requiring the defendant to remove the discrimination this must apparently result in a reduction in the Pensacola rates, and I did not feel that upon the then state of the record we were justified in requiring that reduction. It was said

that the reasonableness of the rates was being contested before the Alabama commission and the course actually adopted by us was to retain the complaint upon our docket where it might be made the subject of further investigation.

The Commission might in that case have found that the circumstances of the transportation from Pensacola were the same as from Mobile and might upon that finding have ordered the carriers to remove the discrimination by putting into effect the same rates from these two points, but to comply with his order the carrier must either have reduced its Pensacola rate or have assumed the burden of showing that the Mobile rate established by the Alabama commission was unduly low. It did not seem to me just to cast this onus upon the carrier until we had gone far enough in our investigation to be willing to say ourselves how the discrimination should be corrected.

I call attention to this case because I am still of that same opinion. While this Commission can not establish and should not attempt to establish, directly or indirectly, a state rate, it must in the exercise of the duty put upon it by the act to regulate commerce determine whether the discrimination exists, and in doing that it may and should examine the state rate in comparison with the interstate rate.

In Andy's Ridge Coal Co. v. S. Ry. Co., 18 I. C. C., 405, the question was presented from a somewhat different angle. The complainant was a shipper of coal from the Coal Creek field in Tennessee to Nashville, Tenn., and its complaint was that the rate made by the defendant from its mine to Nashville was too high in comparison with the rate made by the same defendant from
148 certain points in Virginia to Nashville. In preparing the report it was my own first impression that the Commission should order the defendants to desist from this discrimination, and the facts were stated in that view, but upon consideration the Commission was unanimously of the opinion that in that case we had no jurisdiction, for the reason that the rate used by the complainant was a state rate, and that the burden, therefore, was not upon interstate but rather upon state commerce.

Upon further reflection I think that this case was wrongly decided and should be overruled. The state rate is one blade and the interstate the other of these shears, and it is impossible to say which one does the cutting. In my opinion whenever an interstate carrier creates a discrimination by the maintenance of an interstate as compared with a state rate the application for relief must, of necessity, be directed to this Commission, whether the applicant desires to use the state or the interstate service.

The first section of our act provides that it shall not "apply to the transportation of passengers or property wholly within one state," and it is said that we are thereby debarred from dealing with this situation since, as can not be denied, we affect the state rate. But our order is not directed against the state rate and does not of necessity "apply" to it, because it indirectly controls that rate. If this be not so then the converse must all the more be true and no

state commission can establish a rate which directly or indirectly affects an interstate rate, which is not in my opinion the law.

It is well settled that there is a broad field within which the state may act in the regulation of its transportation facilities until the federal government has exercised its authority under the commerce clause. A state can not apply its rate of transportation to that portion of an interstate movement which takes place within the territorial limits of a state, because the entire movement has been placed under the jurisdiction of the federal government and that jurisdiction is exclusive; but the state may, I think, establish the rate of transportation from point to point within its limits, although the effect of this is to indirectly require a change in interstate rates upon which Congress has not acted. When the federal authority does act, then the state can not by its action interfere, for in case of actual conflict the state must yield, but the mere enactment of the act to regulate commerce is not a federal declaration that the interstate rates voluntarily established by carriers which have not been passed upon by the Interstate Commerce Commission are reasonable.

149 Our third section declares that no carrier subject to the act shall be guilty of undue preference and lays upon this Commission the duty of removing such preference when found to exist. It is no valid reason against the exercise of that authority that as a result some state rate must be changed.

Such an authority must manifestly be exercised by some one, nor is its exercise antagonistic to the interest of state shippers. It is significant that the complainant in the Andy's Ridge case was petitioning the Commission to secure him the enjoyment of a state rate, which could only be done by federal authority.

CLARK, *Commissioner*, concurring:

In indicating my assent to the conclusions reached in this case I shall not undertake to discuss the important and far-reaching questions of law that are involved and upon which, as is evidenced by the several attitudes of my colleagues, wide differences of opinion are entertained.

Under the constitution a state may not levy any tax or impost upon commerce from another state. A transportation rate that has been prescribed by, or that is subject to regulation by, a body created by law for that purpose is in essence a tax or impost upon traffic. Here we have one state demanding that the tax upon its traffic shall not be assessed in such manner as to unjustly discriminate against its citizens by or as a result of action of another state, and an adjoining state insisting upon levying the taxes upon commerce in such manner and measure as to give a monopoly of the traffic here considered to the dealers and commercial centers of that state. It may be suggested that this action is not interference with, and does not impede the free flow of, commerce between the states; that it is simply inviting it to move through one channel or gateway instead of another. These rates, however, do not apply to through movement of the traffic from the points at which it is produced or

manufactured to final points of consumption, but apply to the redistribution of such traffic after it has been laid down at distributing centers. A state may not obstruct a navigable waterway without the consent of the federal government, and it is no answer to say that it has opened another stream or channel in lieu of the one so obstructed.

Whether or not the Congress has exercised its jurisdiction in these premises and whether or not it has delegated to us power to remove such discriminations and preferences are questions which apparently can never be settled until they have been passed upon by the
150 court that is empowered to speak the last word. In this question as between two states possessing equal rights under the constitution and equal rights to federal protection, discrimination that is unjust or preference that is undue should, I think, be abated by federal authority, and so long as there is doubt it should be resolved in favor of that course which is harmonious with the fundamental and recognized purpose of the act to regulate commerce.

CLEMENTS, *Commissioner*, dissenting:

The act to regulate commerce at once confers and specifically limits the powers of the Commission intended by Congress to be exercised by it for the correction of wrongs against which the act was aimed.

The question of authority here presented is not that of the Congress, under the constitution, but that of this Commission, under the statute; it is not what additional powers Congress could or ought to vest in the Commission, but, Has it conferred the power here sought to be exercised?

It is conceded that the effect of the order entered in this case is to control the rates on traffic moving from Dallas, Tex., to points of destination in that state. If the power here asserted exists in this Commission then every state rate can be controlled by it. All that is needed to effect this control is for the Commission, either upon complaint made or in a proceeding instituted by it, to fix the maximum rates from a point outside the state for interstate transportation to a point in the given state on the line of an interstate carrier subject to the act, and then fix what it may determine to be the just relation of rates between that particular point of destination and all other points on the same line.

Section 1 of the act contains the following provision:

"That the provisions of this act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property wholly within one state and not shipped to or from a foreign country from or to any state or territory * * *."

Every other section of the act must be read and considered in the light of this limitation, and regard must be had to the substantial effect of our orders and to the recognized rule of law that what is forbidden to be done directly may not be effected indirectly.

The manifest theory of the statute is that there is a distinct field

for separate and independent state regulation, and another for federal regulation of transportation rates. It is for this Com-
151 mission to exercise only the authority conferred upon it, and when a condition arises presenting wrongs which can not be corrected without additional authority, to submit the situation to Congress, as provided in the act, for consideration of additional legislation which may commend itself to them. Section 3 of the act, condemning discrimination between places as well as persons and different descriptions of traffic, can not be read independently of this restrictive proviso of section 1.

The principles involved in the line of demarcation between state and federal control of commerce, especially with respect to transportation, are of profound importance, and however comprehensive may be the authority of Congress, this Commission is not justified, in my judgment, in undertaking, by interpretation, to read out of the act an important provision, in order to meet a situation which has developed and which, as I view it, can only be reached by additional legislation.

In so far as the administration of complete justice may be defeated by independent state action, it might be the view of Congress that such result had better be borne than to adopt legislation which practically extinguishes state authority, not only in respect to rates for intrastate transportation, but to many other matters involved in the regulations and practices of carriers wherein questions of discrimination may arise.

It will be noted that the judicial utterances quoted by the majority in this case are not confined to the granting of authority by Congress to the Commission, but relate largely to the broader field of the authority of Congress itself, under the constitution.

The conclusion and order of the Commission in this case mark a new departure, in the interpretation of the statute as to the scope of its authority, from its steadfast attitude toward this fundamental question in all previous cases.

HARLAN, *Commissioner*, dissenting:

While the majority report ascribes to the Texas commission the definite policy and purpose of so adjusting the state rates out of Dallas as to make it the jobbing point for eastern Texas, to the prejudice of Shreveport, the principle underlying the ruling would also control when a state commission, without any such motive but in the normal exercise of its functions, has fixed a scale of rates for purely state traffic with an unfavorable effect on some community in an adjoining state, served by the same carrier to the same destinations. The result of the ruling when analyzed, therefore,
152 seems to be that in fixing a rate on the interstate traffic of a carrier we thereby impose on it and upon the lawfully constituted state authorities a standard to which both must adjust their views as to what is a reasonable rate on its purely state traffic. No room is left to the state commission for the exercise of its discretion when fixing a carrier's state rates to destinations to which its in-

terstate rates also run; the only duty it may perform is carefully to ascertain and follow the measure of reasonableness fixed by this Commission for the carrier's interstate rates to those destinations.

Harmony in a carrier's charges is always desirable, and it is doubtless true that complications occasionally arise out of the differences in the rates respectively established by the state and interstate commissions on state and interstate traffic. In some way such situations should be regulated. But the exercise by this Commission of a power that so modifies the control of state commissions over state rates and requires a carrier either to put itself in an attitude of disobedience to an order of a state commission respecting its state traffic or to accept less than a reasonable compensation on its interstate traffic, manifestly ought to rest upon some clear and definite declaration of that policy by the Congress. It rests on an insecure and wholly unsatisfactory foundation for administrative purposes when it flows from a process of reasoning that is admittedly mere construction. This is particularly true when it is announced by a quasi-judicial tribunal that has no general jurisdiction but only such special and limited powers as are defined in the act creating it.

The significance of the ruling is emphasized by the fact that it reverses what has been the settled interpretation of the act by this Commission from its inception. In numerous reported cases we have disclaimed the power now asserted and have expressly construed the proviso of section 1 as excluding the right to control such a situation as is here presented. The Congress must be presumed to have known of these decisions and to have accepted that view as the national policy declared by the statute, for in repeatedly amending the act in other respects it has made no change in that regard.

I concur in general in the views expressed in the dissenting reports of Mr. Commissioner Clements and Mr. Commissioner McChord. It is therefore unnecessary to enter upon any extended discussion of my own, particularly in view of the fact that as the author of the report of the Commission in Saunders v. Southern Express Co., 18 I. C. C., 415, which presented the precise question in
153 an even more direct form, I had occasion carefuly to consider the extent of our powers in such a situation and to express my views at some length. State traffic as a thing in itself to be regulated under the authority of law has been reserved under the constitution to the several states. The power of the federal government to fix maximum rates on state traffic, even when conducted by an interstate carrier, is therefore a matter of no small doubt. Its power to fix minimum rates on state traffic conducted by an interstate carrier, on the general theory that such traffic ought to contribute ratably to the cost of operating a vehicle of interstate commerce in order not to become a burden upon such commerce, seems to me to be more clear. On the same general theory I think that the Congress in aid, or rather in protection, of interstate commerce may forbid discriminations by a railroad or other instrument of interstate traffic in favor of state traffic. This, however, it has not yet undertaken to do. In my judgment the language of the proviso of section 1

admits of no other reasonable construction than that the Congress intended expressly to withhold from this Commission the right, directly or indirectly, to exercise its powers with respect to state commerce or to enforce upon such traffic any of the provisions of the act.

McCHORD, *Commissioner*, dissenting:

In dissenting from the opinion of the majority, it is not my purpose to discuss the relative powers of the state and national governments, for that would presuppose a conflict between federal and state authority, which conflict I do not concede here exists. Neither is it my purpose to argue the extent of the powers of the Congress under the constitution, but rather to confine myself to the powers which the Congress has delegated to this Commission.

The report says complainants have asked this Commission to "establish the same basis of rates of transportation between Shreveport and east Texas points as are accorded by defendants to Texas competitors of Shreveport interests in the same line of business for the same distances." It continues: "With this petition we can not comply unless such power has been granted under the first, third, and fifteenth sections of the act to regulate commerce." The first section provides that the rates charged by carriers for interstate transportation must be reasonable, and prohibits and declares to be unlawful all charges which are unreasonable. The third section prohibits the giving of undue or unreasonable preference or advantage to any person, locality, or particular description of traffic, or the subjection of any person, locality, or particular description of
154 traffic to undue or unreasonable prejudice or disadvantage. Section 15 authorizes the Commission to determine and prescribe just and reasonable rates when, after full hearing upon complaint, it shall be of opinion that the existing rates are unjust or unreasonable or unjustly discriminatory or unduly preferential or prejudicial. Under the majority opinion, therefore, resort must be had to all of the enumerated powers in order to grant the relief prayed for.

The report finds that the rates out of Shreveport, La., into eastern Texas discriminate against Shreveport in favor of Texas jobbers. Without now discussing whether or not an interstate carrier may unduly favor its intrastate traffic, let us consider the situation without regard to the state line. Conceding, for the purpose of argument, that the rates from Dallas to eastern Texas discriminate in favor of Dallas as compared with the rates from Shreveport into eastern Texas, the first question that arises is: Is the discrimination voluntary? In all the reports of this Commission dealing with the question of discrimination we have invariably inquired into the reason for the discrimination to determine whether or not the same was undue, and where we have found the situation to be one over which the carrier defendant has no control we have held that the carrier was not responsible for the discrimination. Section 4 of the act does nothing more than define a particular form of discrimination, and,

from the operation of this carriers have been relieved when the discrimination, i. e., the lower rate to the farther distant point, was brought about by circumstances beyond its control. In some instances these circumstances were water competition; in others market competition, while again, it was carrier competition. The principle underlying our action in all such cases is that the carrier is not responsible for a discrimination occurring because of circumstances over which it has no control. As was said by Mr. Chief Justice White in East Tenn., Va. & Ga. Ry. Co. v. I. C. C., 181 U. S., 1:

"The prohibition of section 3, when that section is considered in its proper relation, is directed against unjust discrimination or undue preference arising from the voluntary and wrongful act of the carriers complained of as having given undue preference, and does not relate to acts the result of conditions wholly beyond the control of the carriers."

In the instances where we have found the lower rate to the farther distant point or the lower rate to the preferred point to have been reasonable, and therefore have used it to measure the reason-
155 ableness of the rate to the point not favored, we have frequently found the latter rate unreasonable and ordered its reduction, but this action was based on section 1 after the complaint under section 3 or 4 had been dismissed. In the present case the rates from Dallas to eastern Texas points are prescribed by the body lawfully constituted and duly empowered so to do—the railroad commission of Texas. If the application of these rates results in a preference to Dallas as compared with Shreveport, then the fact that the intrastate rates were established, not by the voluntary action of the carriers, but under circumstances by which they were controlled, we must find that the discrimination, so far as the carrier is concerned is not undue. In considering, a somewhat similar situation, where the Alabama railroad commission had established rates within the state of Alabama which resulted in alleged discrimination against Pensacola, Fla., the Commission in Saunders & Co. v. Southern Express Co., 18 I. C. C., 421, said:

"The relation of rates thus produced was neither voluntary nor the consequence of any uncontrolled action on its part; the continuation of the relation thus created is not in any sense attributable to the defendant unless it may be said that the defendant is under an obligation to correct the discrimination by voluntarily reducing its Pensacola rates to the basis of the Mobile rates."

This the Commission refused to do, chiefly because it considered that the application of the Alabama rates from Pensacola would not be reasonable to the defendant. By this very action the Commission dismissed the case under section 3 and proceeded to consider it under section 1.

In my opinion, therefore, the charging of lower rates to a common territory for intrastate than for interstate traffic, at least where the intrastate rates are compelled, does not constitute undue discrimination. But suppose it did. Has this Commission power to correct it?

Section 3 declares it to be unlawful for any common carrier subject to the provisions of the act to unduly prefer any person, locality,

or description of traffic, or to subject any person, locality, or description of traffic to undue or unreasonable prejudice or disadvantage. It is specifically provided in section 1, however, "that the provisions of this act shall not apply to the transportation of passengers or property or to the receiving, delivery, storage, or handling of property wholly within one state and not shipped to or from a foreign country from or to any state or territory as aforesaid." To
156 my mind, this excludes the application of section 3 where either the traffic favored or prejudiced lies wholly within one state. Based upon judicial expressions, intrastate commerce is said by the majority to be that commerce which not only is confined to a single state, but also "does not affect other states." The word "affect" renders the application of this phrase extremely uncertain. I do not hesitate to subscribe to the theory that where intrastate commerce or anything else places a direct burden and obstruction upon interstate commerce the obstruction can be removed. The power to regulate interstate commerce is by our constitution vested in the Congress. That body, under the commerce clause of the constitution, possesses numerous powers, only a few of which it has delegated to this Commission. In deputizing this Commission to correct unreasonable and discriminatory transportation charges and practices for the interstate transportation of passengers and property as defined by the act, Congress specifically excluded from our jurisdiction that transportation which lay wholly within one state. The phrase "wholly within one state" is qualified only by "and not shipped to or from a foreign country from or to any state or territory as aforesaid." Had it been the intention of Congress to make the provisions of the interstate-commerce act applicable to transportation wholly within one state which "affects other states," it doubtless would have further qualified the proviso in section 1. The majority report tells us that Congress was fully aware of the fine distinction between interstate and intrastate commerce as laid down by the courts. It is, therefore, but fair to assume that that body knew the significance of the phrase "does not affect other states." Whether or not the Congress was so advised is immaterial in the face of the specific exemption of all transportation wholly within one state. The Congress, and not this Commission, is vested with unqualified power "to regulate commerce with foreign nations and among the several states and with the Indian tribes." Some, but not all, of these powers have been delegated by the Congress to this Commission. If it be true that intrastate transportation of the kind here involved "affects" interstate commerce and is subject to the regulating power of the Congress, it is for that body, and not this, to do the legislating. Certainly, as the law now stands, this Commission can not grant relief under the third section, and the fact that the situation, so far as discrimination is concerned, is without remedy does not give to us power which has specifically been withheld. As we look
157 to the act of Congress rather than to the constitution for our powers and duties, it is useless to discuss the constitutional power of Congress under the commerce clause. In my

opinion, the majority report is in effect legislation which the Congress has expressly refused to enact.

But suppose that into the proviso of section one we read the phrase "which does not affect other states," and suppose further we concede that the Texas rates "affect" other states. A point may be affected either favorably or unfavorably. Where Shreveport is prejudiced and Dallas favored, it is the opinion of the majority that this Commission can order the discrimination removed. The converse, then, must be true, and upon complaint to this Commission that the rates between Texas points discriminate against Dallas as compared with Shreveport, a like order must be issued.

It is stated "to say that interstate carriers may so discriminate because of the orders of the state commission is to admit that the state may limit and prescribe the flow of commerce between the states." Suppose the discrimination were due to on order of this Commission fixing the Shreveport rate: To say that interstate carriers might discriminate because of such order would be an equal admission that this Commission might limit and prescribe the flow of commerce between points in a state. In response to the suggestion that the federal commerce power extended to all the affairs of a railroad if any part of its business was interstate, Mr. Chief Justice White, in Howard v. I. C. R. Co., 207 U. S., 463, said:

"It assumes that because one engages in interstate commerce, he thereby endows Congress with power not delegated to it by the Constitution; in other words, with the right to legislate concerning matters of purely state concern. * * * It is apparent that if the contention were well founded it would extend the power of Congress to every conceivable subject, however inherently local; would obliterate all the limitations of power imposed by the Constitution, and would destroy the authority of the states as to all conceivable matters, which from the beginning have been and must continue to be under their control as long as the Constitution endures.

It has been repeatedly held by the Supreme Court that the power of the state over intrastate commerce is as full and complete as is the power of Congress over interstate commerce. In Sands v. Manistee River Improvement Co., 123 U. S., 288, the court, by Mr. Justice Field, said:

"Internal commerce of a state—that is, the commerce which is wholly confined within its limits—is as much under its control as foreign or interstate commerce is under the control of the general government."

158 The majority points out the chaotic conditions that will result if its view be not accepted. It avers that it will then be within the power of the carriers or of the states to make rates within a state which will so confine the commerce of its communities as to exclude on equal terms other communities. The adoption of the constitution was an expression of the people's aim toward coordination rather than conflict between the sovereignties in the discharge of their respective powers. If, as suggested, our dual plan of government has led to chaos rather than harmony in the regulation of commerce, surely the corrective power has not been lodged

with this Commission; and if not vested in the Congress, the final remedy is to be found, as said in Taylor v. Beckham, 178 U. S., 580, "in the august tribunal of the people which is continually sitting." But I apprehend that such a remedy will not be invoked until it has been more clearly demonstrated than has been done by the majority report that such conflict is real and not the result of misconception both of law and of fact. The Congress is able completely to regulate interstate transportation without the exercise of any control over transportation which lies wholly within a state; so, also, is this Commission, by the proper exercise of the powers which have been conferred. If the alleged preferential intrastate rates are reasonable, and if the transportation conditions from the interstate point to the common territory are similar, it follows that the interstate rates must be too high and should be reduced. But this is not because of discrimination; rather because of inherent unreasonableness. In the determination of the reasonableness of interstate rates comparisons with other rates between points in the same territory or between points in another territory where transportation conditions are similar are extremely helpful, often persuasive, and on account of the high cost, claimed by the carriers and admitted by shippers, for conducting intrastate or local business, the reasonable intrastate rate under similar transportation conditions may safely be accepted for comparative purposes. If an unreasonably low intrastate rate be prescribed by a state commission, the order would not have to be obeyed. The situation may then resolve itself into a question of whether the intrastate rate is reasonable and whether the transportation conditions as to the intrastate and interstate traffic are similar.

Much of the opinion is devoted to a discussion of the supremacy of federal over state control. To my mind, a conclusion both erroneous and unnecessary is reached, and as it is unnecessary I would not further refer to it except for the great length with which
159 the matter has been dealt and my unwillingness to subscribe to the views therein announced. The quotation from the Pullman case, 216 U. S., 65, is unassailable, but it should be remembered that in that case the state of Kansas attempted to impose a tax upon all of the property, both interstate and intrastate, of the Pullman Company. The excerpt from Oklahoma v. Kansas Natural Gas Co., 221 U. S., 261, is quoted from Haskell v. Cowham, 187 Fed., 409, and was directed at the action of the state of Oklahoma in refusing to allow natural gas mined therein to be transported by pipe lines out of the state, a situation in no wise analogous to that here presented. The decision in the Safety Appliance case, 220 U. S., 27, has absolutely no application to the instant case. There it was in effect held that cars and locomotives are instrumentalities and vehicles of commerce moving over an interstate highway and that their proper and safe equipment was necessary to insure the transportation of interstate commerce.

The case of Gibbons v. Ogden, 9 Wheat., 1, dealt with the power of the state of New York to grant an exclusive charter to Fulton and Livingston to operate steamboats on its rivers. The principal contention in that case was that commerce on its rivers was subject to

state control. The Supreme Court held otherwise, but said nothing that has a direct bearing upon the extension of federal control to intrastate rates in instances of the kind here involved.

The several quotations from the report of the Cullom committee are misleading if some notice be not taken of the situation existing at that time. Prior to the enactment of the law of 1887 Congress had made no attempt to regulate commerce among the states other than that by water. To-day, when we have the benefit of numerous judicial interpretations of the phrase "interstate commerce," it is surprising to note the varied opinions expressed by eminent lawyers before the committee which framed that report a quarter of a century ago. Many contended that transportation from a point in a state to a port of transshipment was subject to state control, while others placed under the jurisdiction of the state traffic carried between points in a state passing out of the state en route, and also contended that the state's control extended over the portion of any interstate transportation which lay within its domain. After discussing this situation the report continues: "It would seem that the only construction applicable under all the circumstances would be that which limits the authority of a state to that commerce which is wholly domestic or internal and gives to Congress exclusive control over the remainder."

160 The quotation from Gibbons v. Ogden would be more enlightening if it included the several preceding sentences, as follows: "The word 'among' means to intermingle with. A thing that is among others is intermingled with them. 'Commerce among the states' can not stop at the external boundary line of each state, but may be introduced into the interior." Both the majority opinion and the Cullom report omit the following from Gibbons v. Ogden:

"Comprehensive as the word 'among' is, it may very properly be restricted to that commerce which concerns more states than one. The phrase is not one which would probably have been selected to indicate the completely interior traffic of a state, because it is not an apt phrase for that purpose; and the enumeration of the particular classes of commerce to which the power was to be extended would not have been made had the intention been to extend the power to every description. The enumeration presupposes something not enumerated, and that something, if we regard the language or the subject of the sentence, must be the exclusively internal commerce of a state. The genius and character of the whole government seem to be, that its action is to be applied to all the external concerns of the nation, and to those internal concerns which affect the states generally, but not those which are completely within a particular state, which do not affect other states, and with which it is not necessary to interfere, for the purpose of executing some of the general powers of the government. The completely internal commerce of a state, then, may be considered as reserved for the state itself."

Further on the report quotes Judge Hammond in a case brought in the federal courts of Tennessee to test the validity of a statute enacted in that state for the regulation of railroads:

"The decisions amount, we think, only to this: Where a warehouseman or common carrier is engaged in the storage of goods or their carriage within a state, and exclusively within it, the rates of charges for such business are subject to legislative control by the state, and the fact that such legislation may indirectly and remotely affect commerce between the states does not invalidate it, because, if Congress has, by reason of this indirect and remote regulation of such local business to interstate commerce, any right to assert control over what is primarily domestic commerce, it is to be presumed, until Congress acts, that it does not intend to displace the right of the state to control its domestic commerce."

In Ames v. U. P. R. R. Co., 64 Fed., 171, Mr. Justice Brewer, sitting in circuit, said:

161 "Neither can I understand how the reduction of local rates, as a matter of law, interferes with interstate rates. It is true that the companies may, for their own convenience, to secure business, or for any other reason, rearrange their interstate rates and make them conform to the local rates prescribed by the state, but surely there is no legal compulsion. The statute of the state does not work a change in interstate rates any more than an act of Congress prescribing interstate rates would legally work a change in local rates."

To the suggestion that the exercise of the power to end discrimination between rates within a state and rates to interstate points must lead to conflict in which the jurisdiction of one sovereignty or the others must give way, the majority answers "that when conditions arise which, in the fulfillment of its obligations and the due exercise of its granted power to regulate commerce among the states make such course necessary, the national government must assume its constitutional right to lead." Let us see whether by the finding of the majority the national government really leads. The rates prescribed as maxima to apply from Shreveport are virtually the Texas commission rates that are in effect in Texas. Subject to these maxima, Shreveport is ordered kept on a parity with Houston and Dallas, leaving it then within the power of the Texas commission to further reduce the Shreveport rates by a reduction in the present Texas scale. The national government therefore leads by following the judgment of the state government, to whom it says: "We will adopt not only your present scale of rates, but any lower scale you may see fit to establish. Your judgment has been the standard by which we have measured and fixed the maximum rates from Shreveport. If you desire to make lower rates from Shreveport into Texas you may do so by lowering the Texas scale." Of course, if in this instance we fix interstate rates by the Texas yardstick, we must fix other interstate rates by other state yardsticks, and may find ourselves incumbered with some forty-eight different rate meters, which will doubtless create a condition "more absurd and unbearable" than that which the majority opines would arise if the states remain unmolested in the exercise of their legitimate powers. But, aside from this chaos, the Supreme Court has said that the function which the majority would delegate to the state of Texas can not by a state be constitutionally exercised, because:

"The fact which vitiates the provision is that it compels the carrier to regulate, adjust, or fix his interstate rates with some reference at least to his rates within the state. [L. & N. R. R. Co. v. Eubank, 184 U. S., 41.]"

162 To prevent the conflict between sovereignties which the majority has unnecessarily and by no means conclusively discovered and attempted to remove, the Congress has wisely declared:

"That the provisions of this act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property wholly within one state and not shipped to or from a foreign country from or to any state or territory as aforesaid."

The majority endeavors to interpret this provision by explaining what it does not mean, but I submit that if it were not intended to cover instances of the kind with which we are here dealing its incorporation in the act to regulate commerce was wanton and unnecessary.

My position is that this Commission should confine itself within the four corners of the law of its creation, usurping neither the legislative function of the Congress nor the judicial power of the courts.

163 *Appendix.*

EXHIBIT 1.

Class Rates Dallas, Tex., to Points on the Texas & Pacific Ry.

Station.	Distance.	Class. 1	2	3	4	5	A	B	C	D	E
	Miles.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.
Orphans Home	7.4	13	12	10	8	6	7	6	5	5	4
Mesquite	12.1	15	13	12	10	7	8	6	5	5	4
Forney	20.3	17	15	13	11	9	10	8	6	6	5
Lawrence	27.8	20	18	16	14	12	13	11	9	7	6
Terrell	31.8	21	19	17	15	13	14	12	10	8	6
Elmo	38.3	23	21	19	17	15	16	14	11	9	7
Wills Point	47.4	26	24	22	20	17	18	15	12	10	8
Edgewood	54.6	29	27	25	23	19	20	17	14	12	9
Grand Saline	65.1	32	29	27	25	20	21	18	15	13	10
Mineola	78.2	37	34	32	30	23	24	21	18	14	11
Crow	89.2	40	37	35	32	24	25	22	19	15	12
Hawkins	95.7	42	39	36	33	25	26	23	20	16	13
Big Sandy	101.4	44	41	38	35	26	27	24	21	16	13
Gladewater	111.5	48	45	41	39	28	29	26	23	17	14
Camps	117.1	50	47	43	41	29	30	27	24	18	15
Willow Springs	120.6	51	47	43	41	30	31	28	25	18	15
Longview	124.0	51	47	43	41	30	31	28	25	18	15
Hallsville	134.0	54	50	45	43	31	32	29	26	19	16
Marshall	147.9	57	53	48	46	33	34	31	27	19	16
Scottsville	155.6	59	55	50	48	34	35	32	27	20	16
Jonesville	163.7	61	56	51	49	35	36	33	28	20	16
Waskom	167.0	62	57	51	49	35	36	33	28	20	16
Greenwood	172.5	101	84	74	71	54	58	51	40	28	21
Shreveport	189.7	101	84	74	71	54	58	51	40	28	21

Class Rates Shreveport, La., to Points on the Texas & Pacific Ry.

Station.	Distance.	Class. 1	2	3	4	5	A	B	C	D	E
	Miles.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.
Waskom	22.7	39	27	23	23	23	23	22	17	13	9
Jonesville	26.0	40	28	24	24	24	24	23	17	14	9
Scottsville	34.1	43	30	26	26	26	26	24	18	14	9
Marshall	42.0	56	42	35	33	30	33	30	23	19	13
Hallsville	55.2	60	46	40	35	30	35	30	25	21	15
Longview	65.7	60	49	40	35	30	35	30	25	21	17
Willow Springs	69.1	85	71	55	47	44	47	41	36	25	18
Camps	72.6	85	71	55	47	44	47	41	36	25	18
Gladewater	78.2	85	71	59	50	48	50	45	36	25	18
Big Sandy	88.3	85	71	64	50	49	50	46	36	25	18
Hawkins	94.0	85	72	66	53	49	53	46	36	25	18
Crow	100.5	95	84	67	55	49	53	46	36	25	18
Mineola	111.5	79	64	58	55	47	48	44	36	25	18
Grand Saline	124.6	98	84	67	60	49	53	46	36	25	18
Edgewood	135.1	98	84	67	60	49	53	46	36	25	18
Wills Point	142.3	98	84	67	60	49	53	46	36	25	18
Elmo	151.4	105	92	74	71	54	58	51	40	28	21
Terrell	157.9	105	92	74	71	54	58	51	40	28	21
Lawrence	161.9	105	92	74	71	54	58	51	40	28	21
Forney	169.4	105	92	74	71	54	58	51	40	28	21
Mesquite	177.6	105	92	74	71	54	58	51	40	28	21
Orphans Home	182.3	105	92	74	71	54	58	51	40	28	21
Dallas	189.7	101	84	74	71	54	58	51	40	28	21

164 Class Rates Houston, Tex., to Points on the Houston, East & West Texas Ry.

Station.	Distance.	Class. 1	2	3	4	5	A	B	C	D	E
	Miles.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.
Humble	17.1	16	14	12	10	8	9	7	6	5	5
Pauli	21.9	18	16	14	12	10	11	9	7	6	5
New Caney	28.3	20	18	16	14	12	13	11	9	7	6
Midline	36.5	23	21	19	17	15	16	14	11	9	7
Cleveland	43.2	25	23	21	19	17	18	15	12	10	8
Shepherd	55.3	29	27	25	23	19	20	17	14	12	9
Goodrich	63.4	32	29	27	25	20	21	18	15	13	10
Livingston	71.5	34	31	29	27	21	22	19	16	13	10
Leggett	79.7	37	34	32	30	23	24	21	18	14	11
Valda	83.7	38	35	33	30	23	24	21	18	14	11
Moscow	87.5	40	37	35	32	24	25	22	19	15	12
Carrigan	93.0	41	38	35	32	25	26	23	20	16	13
Renova	103.1	45	42	39	36	27	28	25	22	17	14
Lufkin	118.2	50	47	43	41	29	30	27	24	18	15
Angelina	126.4	52	48	44	42	30	31	28	25	18	15
Nacogdoches	138.3	55	51	46	44	32	33	30	26	19	16
Appleby	147.4	57	53	48	46	33	34	31	27	19	16
Garrison	158.4	60	56	51	49	34	35	32	28	20	16
Timpson	166.8	62	57	51	49	35	36	33	28	20	16
Teneha	176.4	65	60	54	52	37	38	35	29	21	16
Joaquin	187.9	67	62	56	54	38	39	36	30	21	16
Shreveport	**230.7**	**60**	**50**	**40**	**30**	**22**	**25**	**20**	**17**	**16**	**15**

Class Rates Shreveport, La., to Points on the Houston East & West Texas Ry.

Station.	Distance.	Class. 1	2	3	4	5	A	B	C	D	E
	Miles.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.
Joaquin	42.8	40	28	24	24	24	24	23	17	14	9
Teneha	54.3	51	42	34	31	26	28	24	21	19	15
Timpson	63.9	52	43	35	33	27	29	25	22	20	15
Garrison	72.3	56	47	39	36	30	32	28	24	21	15
Appleby	83.3	61	52	43	39	34	36	32	25	21	15
Nacogdoches	92.4	66	57	48	43	38	41	36	25	21	15
Angelina	104.3	68	58	50	47	40	44	37	27	22	15
Lufkin	112.5	69	59	50	47	40	44	37	29	22	15
Renova	127.6	74	65	54	52	42	45	39	31	22	18
Corrigan	137.7	77	67	54	52	42	45	39	31	22	18
Moscow	143.2	82	71	54	52	42	45	39	31	22	18
Valda	147.0	84	71	54	52	42	45	39	31	22	18
Leggett	151.0	84	71	54	52	42	45	39	31	22	18
Livingston	159.2	85	71	54	52	42	45	39	31	22	18
Goodrich	167.3	85	71	54	52	42	45	39	31	22	18
Shepherd	175.4	85	71	54	52	42	45	39	31	22	18
Cleveland	187.5	85	71	54	52	42	45	39	31	22	18
Midline	194.2	85	71	54	52	42	45	39	31	22	18
New Caney	203.4	85	71	54	52	42	45	39	31	22	18
Pauli	208.8	85	71	54	52	42	45	39	31	22	18
Humble	213.6	85	71	54	52	42	45	39	31	22	18
Houston	230.7	85	71	54	52	42	45	39	31	22	18

Note 1.—Rates from Dallas and Houston, Tex., to points in Texas on the Texas & Pacific Ry. and Houston East & West Texas Ry. as shown in Texas Lines Basing Tariff No. 2, Wyatt's I. C. C. No. 2.

Note 2.—All rates between Texas points and points in Louisiana as shown in Southwestern Lines Tariff 24-T, Leland's I. C. C. No. 871.

Note 3.—All mileages used as shown in Texas Lines Mileage Circular No. 6, Wyatt's I. C. C. No. 10, and Texas & Pacific Ry. Local Distance Table Circular 78, I. C. C. No. 1872.

Exhibit 2.

Comparison of Rates Paid by Wholesale Grocers at Shreveport and by Their Texas Competitors to Common Destinations.

From—	To—	Dist. Miles.	Sugar. Cents.	Flour. Cents.	Grain. Cents.	Hay. Cents.	Canned Goods. Cents.	Lard compounds. Cents.	Green coffee. Cents.	Bagging. Cents.	Ties. Cents.	Bagging and ties; carload. Cents.	Extracts. Cents.	Cheese. Cents.
Nacogdoches	Joaquin	49.6	21.0	21.0	21.0	20.5	21.0	21.0	21.0	21.0	21.0	18.0	27.0	25.0
Shreveport	do.	42.8	24.0	24.0	24.0	24.0	24.0	24.0	24.0	24.0	24.0	24.0	40.0	28.0
Nacogdoches	Teneha	38.1	17.0	17.0	17.0	17.0	17.0	17.0	17.0	17.0	17.0	15.0	23.0	21.0
Shreveport	do.	54.3	31.0	31.0	31.0	34.0	31.0	31.0	31.0	34.0	31.0	24.5	51.0	42.0
Nacogdoches	Timpson	25.8	13.0	13.0	13.0	13.0	13.0	13.0	13.0	13.0	13.0	11.0	19.0	17.0
Shreveport	do.	63.9	33.0	33.0	33.0	35.0	33.0	33.0	33.0	35.0	33.0	24.5	52.0	43.0
Nacogdoches	Center	49.7	26.0	26.0	26.0	26.0	26.0	26.0	26.0	26.0	26.0	18.0	35.0	32.0
Longview	do.	67.8	26.0	25.5	23.5	21.5	26.0	26.0	26.0	26.0	26.0	18.0	33.0	30.0
Shreveport	do.	65.6	35.0	35.0	35.0	40.0	35.0	35.0	35.0	40.0	35.0	24.5	60.0	49.0
Longview	Backville	26.2	13.0	13.0	13.0	13.0	13.0	13.0	13.0	13.0	13.0	11.0	19.0	17.0
Shreveport	do.	84.6	35.0	35.0	35.0	40.0	35.0	35.0	35.0	40.0	35.0	24.5	60.0	49.0
Marshall	Elysian Fields	17.5	10.0	10.0	10.0	10.0	10.0	10.0	10.0	10.0	10.0	8.0	16.0	14.0
Shreveport	do.	57.3	71.0	71.0	71.0	74.0	71.0	71.0	71.0	74.0	71.0	24.5	105.0	92.0
Texarkana	Marshall	66.7	26.0	25.5	23.5	21.5	26.0	26.0	26.0	26.0	26.0	18.0	33.0	30.0
Shreveport	do.	42.0	33.0	33.0	33.0	35.0	33.0	33.0	33.0	35.0	33.0	24.5	56.0	42.0
Texarkana	Jefferson	51.2	22.0	22.0	22.0	21.0	22.0	22.0	22.0	22.0	22.0	18.0	28.0	26.0
Marshall	do.	15.7	10.0	10.0	10.0	10.0	10.0	10.0	10.0	10.0	10.0	8.0	16.0	14.0
Shreveport	do.	47.7	30.0	30.0	30.0	35.0	30.0	30.0	30.0	35.0	30.0	24.5	56.0	42.0
Longview	San Augustine	87.2	37.0	32.5	29.5	27.0	37.0	37.0	37.0	37.0	37.0	18.0	48.0	44.0
Nacogdoches	do.	69.1	32.0	32.0	32.0	30.0	32.0	32.0	32.0	32.0	32.0	18.0	42.0	38.0
Beaumont	do.	120.5	38.0	29.0	26.5	25.5	41.0	41.0	41.0	41.0	41.0	18.0	51.0	47.0
Shreveport	do.	85.0	39.0	39.0	39.0	43.0	39.0	39.0	39.0	43.0	39.0	24.5	61.0	52.0
Pittsburg	Avinger	30.9	12.0	12.0	12.0	12.0	12.0	12.0	12.0	12.0	12.0	10.4	21.0	19.0
Shreveport	do.	66.1	42.0	42.0	42.0	44.0	42.0	42.0	42.0	44.0	42.0	24.5	64.0	51.0
Texarkana	Atlanta	23.8	12.0	12.0	12.0	12.0	12.0	12.0	12.0	12.0	12.0	10.0	18.0	16.0
Shreveport	do.	60.8	33.0	33.0	33.0	35.0	33.0	33.0	33.0	35.0	33.0	24.5	56.0	42.0
Marshall	Waskom	19.1	11.0	11.0	11.0	11.0	11.0	11.0	11.0	11.0	11.0	9.0	17.0	15.0
Shreveport	do.	20.5	23.0	23.0	23.0	23.0	23.0	23.0	23.0	9.0	9.0	9.0	39.0	27.0

166 **EXHIBIT 3.**

Comparison of Rates Paid by Wholesale Saddlery and Vehicle Dealers at Shreveport and by Their Texas Competitors at Common Destination.

From—	To—	Distance.	Wagons.	Buggies.	Saddles.	Harness.	Horse collars.	Leather.
		Miles.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.
Dallas	Jonesville	163.7	39.2	48.8	61.0	61.0	61.0	56.0
Shreveport	do.	26.0	40.0	60.0	40.0	40.0	40.0	28.0
Dallas	Marshall	147.7	36.8	45.6	57.0	57.0	57.0	53.0
Shreveport	do.	42.0	56.0	84.0	56.0	56.0	56.0	42.0
Dallas	Elysian Fields.	165.2	54.0	56.0	70.0	70.0	70.0	64.0
Shreveport	do.	57.3	105.0	157.5	105.0	105.0	105.0	82.0
Dallas	Tenecha	180.2	58.0	59.2	74.0	74.0	74.0	68.0
Shreveport	do.	54.3	51.0	76.5	51.0	51.0	51.0	42.0
Dallas	Joaquin	192.0	58.0	60.8	76.0	76.0	76.0	70.0
Shreveport	do.	42.8	40.0	60.0	40.0	40.0	40.0	40.0

Comparison of Rates Paid by Furniture and Stationery Dealers at Shreveport and by Their Texas Competitors at Common Destinations.

From—	To—	Distance.	Stationery.	Document files, k d.	Sales books, cash slips.	Talking machines records.	Iron parts, office chairs.	Furniture, new, c. l.
		Miles.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.
Dallas	Nacogdoches	168.1	71.0	65.0	58.0	71.0	55.0	41.0
Galveston	do.	186.0	62.0	57.0	51.0	62.0	47.0	36.0
Shreveport	do.	92.4	66.0	57.0	48.0	66.0	43.0	41.0
Dallas	Tyler	103.4	53.0	49.0	36.0	53.0	41.0	25.6
Galveston	do.	262.8	81.0	74.0	64.0	81.0	60.0	45.0
Shreveport	do.	107.6	91.0	78.0	66.0	91.0	59.0	57.0
Dallas	San Augustine.	211.9	80.0	72.0	60.0	80.0	58.0	46.0
Galveston	do.	194.0	86.0	78.0	65.0	86.0	61.0	44.0
Shreveport	do.	85.0	61.0	52.0	43.0	61.0	39.0	36.0
Dallas	Longview	124.0	51.0	47.0	34.4	51.0	41.0	24.8
Galveston	do.	280.1	84.0	76.0	65.0	84.0	61.0	47.0
Shreveport	do.	65.7	60.0	49.0	40.0	60.0	35.0	35.0
Dallas	Pittsburgh	126.0	52.0	48.0	35.2	52.0	42.0	24.8
Galveston	do.	320.9	87.0	78.0	65.0	87.0	61.0	49.0
Shreveport	do.	97.0	74.0	60.0	53.0	74.0	52.0	46.0
Dallas	Clarksville	130.8	61.0	56.0	40.8	61.0	48.0	28.8
Galveston	do.	392.3	87.0	78.0	65.0	87.0	61.0	49.0
Shreveport	do.	133.1	105.0	92.0	74.0	105.0	71.0	58.0
Dallas	Carthage	160.6	69.0	63.0	57.0	69.0	54.0	40.0
Galveston	do.	233.5	82.0	75.0	65.0	82.0	61.0	42.0
Shreveport	do.	74.9	60.0	49.0	40.0	60.0	35.0	35.0
Dallas	Mineola	78.2	37.0	34.0	25.6	37.0	30.0	19.2
Galveston	do.	288.4	86.0	77.0	65.0	86.0	61.0	48.0
Shreveport	do.	111.5	79.0	64.0	58.0	79.0	55.0	48.0

167 EXHIBIT 4.

General Tariff of Class Rates, No. 3.

Effective February 10, 1902, with amendments in effect October 31, 1910.

The rates in this tariff shall be subject to Texas classification No. 1 and amendments or subsequent issue.

Section 1.—Table of Rates.

(Rates, in cents per 100 pounds to apply on merchandise by classes, transported by railroads between points in Texas, except as otherwise provided in Sections 2, 3, and 4, of this tariff.)

	Less than carloads.					Carloads.				
Distances, miles.	1	2	3	4	5	A	B	C	D	E
10 and less	13	12	10	8	6	7	6	5	5	4
12 and over 10	14	12	11	9	6	7	6	5	5	4
15 and over 12	15	13	12	10	7	8	6	5	5	4
18 and over 15	16	14	12	10	8	9	7	6	5	5
21 and over 18	17	15	13	11	9	10	8	6	6	5
24 and over 21	18	16	14	12	10	11	9	7	6	5
27 and over 24	19	17	15	13	11	12	10	8	7	6
30 and over 27	20	18	16	14	12	13	11	9	7	6
33 and over 30	21	19	17	15	13	14	12	10	8	6
36 and over 33	22	20	18	16	14	15	13	10	8	7
39 and over 36	23	21	19	17	15	16	14	11	9	7
42 and over 39	24	22	20	18	16	17	14	11	9	7
45 and over 42	25	23	21	19	17	18	15	12	10	8
48 and over 45	26	24	22	20	17	18	15	12	10	8
51 and over 48	27	25	23	21	18	19	16	13	11	8
54 and over 51	28	26	24	22	18	19	16	13	11	9
57 and over 54	29	27	25	23	19	20	17	14	12	9
60 and over 57	30	28	26	24	19	20	17	14	12	9
63 and over 60	31	28	26	24	20	21	18	15	13	10
66 and over 63	32	29	27	25	20	21	18	15	13	10
69 and over 66	33	30	28	26	21	22	19	16	13	10
72 and over 69	34	31	29	27	21	22	19	16	13	10
75 and over 72	35	32	30	28	22	23	20	17	14	11
78 and over 75	36	33	31	29	22	23	20	17	14	11
81 and over 78	37	34	32	30	23	24	21	18	14	11
84 and over 81	38	35	33	30	23	24	21	18	14	11
87 and over 84	39	36	34	31	24	25	22	19	15	12
90 and over 87	40	37	35	32	24	25	22	19	15	12
93 and over 90	41	38	35	32	25	26	23	20	16	13
96 and over 93	42	39	36	33	25	26	23	20	16	13
99 and over 96	43	40	37	34	26	27	24	21	16	13
102 and over 99	44	41	38	35	26	27	24	21	16	13
105 and over 102	45	42	39	36	27	28	25	22	17	14
108 and over 105	46	43	40	37	27	28	25	22	17	14
111 and over 108	47	44	40	38	28	29	26	23	17	14
114 and over 111	48	45	41	39	28	29	26	23	17	14
117 and over 114	49	46	42	40	29	30	27	24	18	15
120 and over 117	50	47	43	41	29	30	27	24	18	15

124 and over 120	51	47	43	41	30	31	28	25	18	15
128 and over 124	52	48	44	42	30	31	28	25	18	15
132 and over 128	53	49	45	43	31	32	29	25	18	15
136 and over 132	54	50	45	43	31	32	29	26	19	16
140 and over 136	55	51	46	44	32	33	30	26	19	16
144 and over 140	56	52	47	45	32	33	30	26	19	16

	Less than carloads.					Carloads.				
168 Distances, miles.	1	2	3	4	5	A	B	C	D	E
148 and over 144	57	53	48	46	33	34	31	27	19	16
152 and over 148	58	54	49	47	33	34	31	27	19	16
156 and over 152	59	55	50	48	34	35	32	27	20	16
160 and over 156	60	56	51	49	34	35	32	28	20	16
164 and over 160	61	56	51	49	35	36	33	28	20	16
168 and over 164	62	57	51	49	35	36	33	28	20	16
172 and over 168	63	58	52	50	36	37	34	29	20	16
176 and over 172	64	59	53	51	36	37	34	29	21	16
180 and over 176	65	60	54	52	37	38	35	29	21	16
184 and over 180	66	61	55	53	37	38	35	30	21	16
188 and over 184	67	62	56	54	38	39	36	30	21	16
192 and over 188	68	63	57	55	38	39	36	30	21	16
196 and over 192	69	64	58	56	39	40	37	31	22	17
200 and over 196	70	65	58	56	39	40	37	31	22	17
205 and over 200	71	65	58	56	40	41	37	31	22	17
210 and over 205	72	66	59	57	40	41	38	32	22	17
215 and over 210	73	67	59	57	41	42	38	32	22	17
220 and over 215	74	68	59	57	41	42	38	32	22	17
225 and over 220	75	69	59	57	42	43	39	33	23	17
230 and over 225	76	70	60	58	42	43	39	33	23	17
235 and over 230	77	70	60	58	43	44	39	33	23	17
240 and over 235	78	71	60	58	43	44	40	34	23	17
245 and over 240	79	71	60	58	44	45	40	34	23	17
Over 245	80	72	60	58	44	46	40	34	23	17

Section 2.—Joint Rates.

For the transportation of shipments over two or more railroads which are not under the same management and control, and not otherwise provided for, the rates shall be made by adding to the rates prescribed in table of rates, Section 1, of this tariff, the following, viz:

Class	1	2	3	4	5	A	B	C	D	E
Rate	8	7	6	5	4	4	4	3	2	2

Provided: 1. That when the sum of the rates prescribed for local application is less than a joint rate made in accordance with the above instructions, such sum of rates shall be used as the joint rate.

2. That the joint rates in common-point territory shall not exceed the following figures, viz:

Class	1	2	3	4	5	A	B	C	D	E
Rate	80	72	60	58	44	46	40	34	23	17

except in cases where greater rates may be made by using the rates provided in exceptions, Section 3, of this tariff.

NOTE.—The term "common-point territory" designates that portion of Texas lying south of the Amarillo division of the Chicago, Rock Island & Gulf Railway, but including Amarillo, and east of and including points on a line drawn from Amarillo via Midland (Cir. No. 3572, effective Nov. 1, 1910) on the Texas & Pacific Railway; San Angelo on the Gulf, Colorado & Santa Fe Railway; Brady on the Fort Worth & Rio Grande Railway; Llano on the Houston & Texas Central Railroad; San Antonio on the Galveston, Harrisburg & San Antonio Railway and San Antonio & Aransas Pass Railway; Laredo on the International & Great Northern Railroad, and Alice and Corpus Christi on the San Antonio & Aransas Pass Railway; provided, that no part of the St. Louis, Brownsville & Mexico Railway south of Sinton and the Texas Mexican Railway shall be included in common-point territory. (Cir. No. 2271, effective July 10, 1905.)

169 Exception 1 to Note.—The Wichita Valley Railway west of Sagerton shall be considered in differential territory. See exception 3, section 4, for special differential rates. (Cir. 3194, effective Sept. 15, 1909.)

Exception 2 to Note.—The Concho, San Saba & Llano Valley Railroad (canceled by Cir. No. 3368, effective Apr. 1, 1910).

Order.

At a General Session of the Interstate Commerce Commission, Held at Its Office, in Washington, D. C., on the 11th Day of March, A. D. 1912.

Charles A. Prouty, Judson C. Clements, Franklin K. Lane, Edgar E. Clark, James S. Harlan, Charles C. McChord, Balthasar H. Meyer, Commissioners.

No. 3918.

J. J. MEREDITH, SHELBY TAYLOR, and HENRY B. SCHREIBER, Constituting the Railroad Commission of Louisiana,

v.

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, ST. LOUIS SOUTHwestern Railway Company of Texas, Burrs Ferry, Browndel & Chester Railway Company, Eastern Texas Railroad Company, The Texas & Pacific Railway Company, Gulf, Colorado and Santa Fe Railway Company, Houston & Shreveport Railroad Company, The Houston, East & West Texas Railway Company, Texas & New Orleans Railroad Company, The Missouri, Kansas & Texas Railway Company of Texas, Texarkana & Fort Smith Railway Company, The Kansas City Southern Railway Company, The Texas & Gulf Railway Company, Marshall & East Texas Railway Company, Timpson & Henderson Railway Company, Shreveport, Houston & Gulf Railroad Company, Texas Southeastern Railroad Company, Caro Northern Railway Company, The Nacogdoches & Southeastern Railroad Company, International
170 & Great Northern Railroad Company, and Thomas J. Freeman, Receiver thereof; Groveton, Lufkin & Northern Railway Company, Moscow, Camden & San Augustine Railway, Jefferson & Northwestern Railway Company, The Gulf & Interstate Railway Company of Texas, The Galveston, Harrisburg & San Antonio Railway Company, Galveston, Houston & Henderson Railroad Company, The Trinity & Brazos Valley Railway Company, and Texas State Railroad.

This case being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It is ordered, That defendants The Texas & Pacific Railway Company, The Houston, East & West Texas Railway Company, and Houston & Shreveport Railroad Company be, and they are hereby, notified and required to cease and desist, on or before the 1st day of May, 1912, and for a period of not less than two years thereafter abstain, from exacting their present class rates for the transportation of traffic from Shreveport, La., to the points in Texas herein-

after mentioned on their respective lines, as the Commission in said report finds such rates to be unjust and unreasonable.

It is further ordered, That defendant The Texas & Pacific Railway Company be, and it is hereby, notified and required to establish and put in force, on or before the 1st day of May, 1912, and maintain in force thereafter during a period of not less than two years, and apply to the transportation of traffic from Shreveport, La., to the below-named points in Texas, class rates which shall not exceed the following, in cents per 100 pounds, which rates are found by the Commission in its report to be reasonable, to wit:

171 **On the Texas & Pacific Railway.**

	Class rates in cents per 100 pounds.									
From Shreveport, La., to—	1	2	3	4	5	A	B	C	D	E
Waskom, Tex	18	16	14	12	10	11	9	7	6	5
Jonesville, Tex.	19	17	15	13	11	12	10	8	7	6
Scottsville, Tex.	22	20	18	16	14	15	13	10	8	7
Marshall, Tex.	24	22	20	18	16	17	14	11	9	7
Hallsville, Tex.	29	27	25	23	19	20	17	14	12	9
Longview, Tex.	32	29	27	25	20	21	18	15	13	10
Willow Springs, Tex.	34	31	29	27	21	22	19	16	13	10
Camps, Tex.	35	32	30	28	22	23	20	17	14	11
Gladewater, Tex.	37	34	32	30	23	24	21	18	14	11
Big Sandy, Tex.	40	37	35	32	24	25	22	19	15	12
Hawkins, Tex.	42	39	36	33	25	26	23	20	16	13
Crow, Tex.	44	41	38	35	26	27	24	21	16	13
Mineola, Tex.	48	45	41	39	28	29	26	23	17	14
Grand Saline, Tex.	52	48	44	42	30	31	28	25	18	15
Edgewood, Tex.	54	50	45	43	31	32	29	26	19	16
Wills Point, Tex.	56	52	47	45	32	33	30	26	19	16
Elmo, Tex.	58	54	49	47	33	34	31	27	19	16
Terrell, Tex.	60	56	51	49	34	35	32	28	20	16
Lawrence, Tex.	61	56	51	49	35	36	33	28	20	16
Forney, Tex.	63	58	52	50	36	37	34	29	20	16
Mesquite, Tex.	65	60	54	52	37	38	35	29	21	16
Orphans' Home, Tex.	66	61	55	53	37	38	35	30	21	16

It is further ordered, That defendants The Houston, East & West Texas Railway Company and Houston & Shreveport Railroad Company be, and they are hereby, notified and required to establish and put in force, on or before the 1st day of May, 1912, and maintain in force thereafter during a period of not less than two years, and apply to the transportation of traffic from Shreveport, La., to the below-named points in Texas, class rates which shall not exceed the following, in cents per 100 pounds, which rates are found by the Commission in its report to be reasonable, to wit:

172 On the Houston, East & West Texas Railway.

	Class rates in cents per 100 pounds.									
From Shreveport, La., to—	1	2	3	4	5	A	B	C	D	E
Joaquin, Tex.	25	23	21	19	17	18	15	12	10	8
Teneha, Tex.	29	27	25	23	19	20	17	14	12	9
Timpson, Tex.	32	29	27	25	20	21	18	15	13	10
Garrison, Tex.	35	32	30	28	22	23	20	17	14	11
Appleby, Tex.	38	35	33	30	23	24	21	18	14	11
Nacogdoches, Tex.	41	38	35	32	25	26	23	20	16	13
Angelina, Tex.	45	42	39	36	27	28	25	22	17	14
Lufkin, Tex.	48	45	41	39	28	29	26	23	17	14
Renova, Tex.	52	48	44	42	30	31	28	25	18	15
Corrigan, Tex.	55	51	46	44	32	33	30	26	19	16
Moscow, Tex.	56	52	47	45	32	33	30	26	19	16
Valda, Tex.	57	53	48	46	33	34	31	27	19	16
Leggett, Tex.	58	54	49	47	33	34	31	27	19	16
Livingston, Tex.	60	56	51	49	34	35	32	28	20	16
Goodrich, Tex.	62	57	51	49	35	36	33	28	20	16
Shepherd, Tex.	64	59	53	51	36	37	34	29	21	16
Cleveland, Tex.	67	62	56	54	38	39	36	30	21	16
Midline, Tex.	69	64	58	56	39	40	37	31	22	17
New Caney, Tex.	71	65	58	56	40	41	37	31	22	17
Paull, Tex.	72	66	59	57	40	41	38	32	22	17
Humble, Tex.	73	67	59	57	41	42	38	32	22	17
Houston, Tex.	77	70	60	58	43	44	39	33	23	17

It is further ordered, That defendant The Texas & Pacific Railway Company be, and it is hereby, notified and required to cease and desist, on or before the 1st day of May, 1912, and for a period of not less than two years thereafter abstain, from exacting any higher rates for the transportation of any article from Shreveport, La., to Dallas, Tex., and points on its lines intermediate thereto, than are contemporaneously exacted for the transportation of such article from Dallas, Tex., toward said Shreveport for an equal distance, as said relation of rates has been found by the Commission in said report to be reasonable.

It is further ordered, That defendants The Houston, East & West Texas Railway Company and Houston & Shreveport Railroad Company be, and they are hereby, notified and required to cease and desist, on or before the 1st day of May, 1912, and for a period of not less than two years thereafter abstain, from exacting any higher rates for the transportation of any article from Shreveport, La., to Houston, Tex., and points on its line intermediate thereto, than are contemporaneously exacted for the transportation of such article from Houston, Tex., toward said Shreveport for an equal distance, as said relation of rates has been found by the Commission in said report to be reasonable.

And it is further ordered, That said defendants be, and
173 they are hereby, notified and required to establish and put in force, on or before the 1st day of May, 1912, and maintain in force thereafter during a period of not less than two years,

substantially similar practices respecting the concentration of interstate cotton at Shreveport, La., to those which are contemporaneously observed by said defendants respecting the concentration of cotton within the state of Texas, provided the practices adopted shall be justifiable under the act to regulate commerce and applicable fairly under like conditions elsewhere on the lines of such defendants.

By the Commission:

[SEAL.] JOHN H. MARBLE, *Secretary.*

174 EXHIBIT B.

Extracts from Texas Statutes.

Art. 4562, Paragraphs 4 and 8 (R. S. 1895). May fix different rates.—The said commission may fix different rates for different railroads and for different lines under the same management, or for different parts of the same lines if found necessary to do justice, and may make rates for express companies different from the rates fixed for railroads.

May alter, abolish, etc.—The Commission shall have power and it shall be its duty from time to time, to alter, change, amend or abolish any classification or rate established by it when deemed necessary; and such amended, altered or new classifications or rates shall be put into effect in the same manner as the originals.

Art. 4564 (R. S. 1895). Rates to be held conclusive until, etc.—In all actions between private parties and railway companies brought under this law, the rates, charges, orders, rules, regulations and classifications prescribed by said Commission before the institution of such action shall be held conclusive, and deemed and accepted to be reasonable, fair and just, and in such respects shall not be controverted therein until finally found otherwise in a direct action brought for that purpose in the manner prescribed by Articles 4565 and 4566 of this chapter. (Ib., Sec. 5.)

Art. 4565 (R. S. 1895). When railway dissatisfied, may file petition, etc.—If any railroad company or other party at interest be dissatisfied with the decision of any rate, classification, rule, charge, order, act or regulation adopted by the Commission, such dissatisfied company or party may file a petition setting forth the particular cause or causes of objection to such decision, act, rate, rule, charge, classification or order, or to either or all of them, in a court of competent jurisdiction in Travis County, Texas, against said Commission as defendant. Said action shall have precedence over all other causes on the docket of a different nature, and shall be tried and determined as other civil causes in said court. Either party to said action may appeal to the Appellate Court having jurisdiction of said cause, and said appeal shall be at once returnable to said Appellate Court, at either of its terms, and said action so appealed shall have precedence in said Appellate Court of
175 all causes of a different character therein pending; provided, that if the court be in session at the time such right of

action accrues, the suit may be filed during such term and stand ready for trial after ten days' notice. (Ib., Sec. 6.)

Art. 4566 (R. S. 1895). Burden of proof.—In all trials under the foregoing article the burden of proof shall rest upon the plaintiff, who must show by clear and satisfactory evidence that the rates, regulations, orders, classifications, acts or charges complained of are unreasonable and unjust to it or them.

Art. 4571, Paragraph 3 (R. S. 1895). Duty as to through freights.—The said Commission shall have power, and it is hereby made its duty, to investigate all through freight rates on railroads in Texas; and when the same are, in the opinion of the Commission, excessive or levied or laid in violation of the interstate commerce law, or the rules and regulations of the Interstate Commerce Commission, the officials of the railroads are to be notified of the facts and requested to reduce them or make the proper corrections, as the case may be. When the rates are not changed or the proper corrections are not made according to the request of the Commission, the latter is instructed to notify the Interstate Commerce Commission and to apply to it for relief.

Art. 4573 (R. S. 1895). Penalty for extortion.—If any railroad company, subject to this chapter, or its agent or officer, shall hereafter charge, collect, demand or receive from any person, company, firm or corporation a greater rate, charge or compensation than that fixed and established by the Railroad Commission for the transportation of freight, passengers or cars, or for the use of any car on the line of its railroad, or any line operated by it, or for receiving, forwarding, handling or storing any such freight or cars, or for any other service performed or to be performed by it, such railroad company and its said agent and officer shall be deemed guilty of extortion, and shall forfeit and pay to the State of Texas a sum not less than one hundred dollars nor more than five thousand dollars.

Art. 4575 (R. S. 1895). Liability under this chapter; venue.—In case any railroad subject to this chapter shall do, cause to be done, or permit to be done any matter, act or thing in this chapter prohibited or declared to be unlawful, or shall omit to do any act, matter or thing herein required to be done by it, such railroad shall be liable to the person or persons, firm or corporation injured thereby for
176 the damages sustained in consequence of such violation; and in case said railroad company shall be guilty of extortion or discrimination as by this chapter defined, then, in addition to such damages, such railroad shall pay to the person, firm or corporation injured thereby a penalty of not less than one hundred and twenty-five dollars nor more than five hundred dollars, to be recovered in any court of competent jurisdiction in any county into or through which such railroad may run; provided, that such road may plead and prove as a defense to the action for said penalty that such overcharge was unintentionally and innocently made through a mistake of fact; provided, that any such recovery as herein provided shall in no manner affect a recovery by the state of a penalty provided for such violation.

Art. 4576 (R. S. 1895 as amended in 1901). Penalty when not

otherwise provided.—If any railway company doing business in this state shall hereafter violate any other provision of this chapter, or shall do any other act herein prohibited, or shall fail or refuse to perform any other duty enjoined upon it for which a penalty has not been provided by law, or shall fail, neglect or refuse to obey any lawful requirement, order, judgment or decree made by the Railroad Commission of Texas, for every such act of violation it shall pay to the State of Texas a penalty of not more than $5,000.

Art. 4581-*a* (R. S. 1895). Emergency freight rates.—In addition to the powers conferred on the Railroad Commission of Texas by Articles 4563 and 4567 of the Revised Statutes of this state, said Commission shall have power, when deemed by it necessary, to stop or prevent interstate rate wars and injury to the business or interests of the people or railroads of this state, or in case of any other emergency, to be judged of by the Commission; and it shall be its duty, after three days' notice to the roads interested, to alter, amend or suspend any existing freight rate on any railroad in this state, or to fix freight rates where none exist.

Art. 4581-*b* (R. S. 1895). May apply to one or more roads or parts of roads.—Said emergency rates, so made by the Commission, shall apply on any one or more of all the railroads in this state, or part of railroads, as may be directed by the Commission.

Art. 4581-*c* (R. S. 1895). Rates take effect and remain in force, etc.—Said rates, so made, shall take effect at such time, and remain in force for such length of time, as may be prescribed by the Commission.

177 Act of July 12, 1907. Power to Make Emergency Rates.—That in addition to all other powers conferred by law upon the Railroad Commission of Texas, said Commission shall have the power to make temporary freight and passenger tariffs, to take immediate effect or at such times as shall be fixed by said Commission, whenever an emergency arises, the sufficiency of which shall be judged of by said Commission, in order that justice may be done or injury prevented any person, place or locality; and said Commission shall have the power at once to suspend temporarily any existing freight or passenger tariff and to establish freight and passenger tariffs, rules and regulations for temporary use to have immediate effect where none exists.

178 EXHIBIT C.

Rate Adjustment.

Portions of Texas & Pacific, St. Louis Southwestern Railway of Texas, and Missouri, Kansas & Texas Railway of Texas.

Circular No. 1178, effective September 7, 1900, and as amended by Circular No. 1531, effective February 10, 1902.

The charges for transporting shipments of the articles named in the following list, between points on the lines of railroad described below, shall be made at eighty (80) per cent. of the current rates on such articles:

Railroads upon which the adjustment of rates applies:

1. Between points on the Texas & Pacific Railway, and the Denison & Pacific Suburban Railway east of and including Denison, Sherman and Dallas, but not from Texarkana, Waskom and intermediate points on the Texas & Pacific Railway.

2. Between points on the Missouri, Kansas & Texas Railway of Texas east of and including McKinney, but not from Jefferson, Waskom and intermediate points on the Missouri, Kansas & Texas Railway of Texas.

3. Between points on the St. Louis Southwestern Railway of Texas east of and including Sherman, Plano and Dallas, and north of and including Tyler, but not from Texarkana.

List of articles subject to the adjustment of rates.

Carload and less than carload shipments of all articles which are, in carloads, subject to fifth-class and class- A, B, C, D and E rates.

Carload and less than carload shipments of:

Agricultural implements, including hand implements, plow points and other parts of agricultural implements, rough or finished, and wagons (farm) or parts of same, rough or finished.

Axes, in boxes.

Bagging for baling cotton (less than carload only).

Candy, invoice value 10 cents or less per pound.

Canned goods, consisting of canned fruits and vegetables, canned fish, lobsters, crabs, shrimps and clams, canned soup, broth, clam juice, cove oysters, canned syrup, jellies and preserves, in boxes, barrels or crates.

179 Cotton bale ties and buckles (carloads and less than carloads).

Cotton factory products.

Crackers.

Furniture, new, all kinds.

Glass, window, loaded in box cars.

Glassware, all kinds, except cut glassware.

Glucose, glucose syrup and grape syrup.

Iron and steel articles:

Architectural iron, including columns, pedestals, capitals, plates, saddles, door and window jambs, sills and lintels, rolled beams, angle bars and girders.

Axles, carriage or wagon.

Bolts, in boxes, barrels, casks or drums.

Bridge material, iron; merchants' iron, consisting of band, bar, boiler and plate iron and steel.

Carriage and wagon skeins and boxes in barrels, casks or kegs.

Castings, not machinery.

Chains, in bundles or casks.

Crowbars.

Fence posts.

Harrow teeth.

Hay bale ties.

Jail plate.

Kilns, lime, or parts thereof, manufactured of sheet or boiler iron,

with cast iron doors and door frames, grates and floors, K. D., crated, boxed or in bundles.
Lap rings.
Mattocks, in bundles.
Nails, cut or wire.
Nails, horse and mule shoe, in boxes or kegs.
Nuts, in boxes, barrels, casks or drums.
Picks, in bundles, barrels or casks.
Pipe, wrought, couplings and connections.
Plow steel, unfinished.
Poles, electric light or railway.
Rivets, in boxes or kegs.
Roofing, black, plain, corrugated or painted.
Sad irons, in bundles, boxes or casks.
Sash weights.
Sheet iron.
Shoes, horse or mule, in kegs.
Shutters.
180 Spikes, cut or wire.
Staples, in barrels, boxes or kegs.
Shingle bands, in bundles.
Skelp iron.
Sledges, in bundles (without handles).
Strap hinges, in barrels or kegs, invoice value 2½ cents or less per pound.
Washers, in boxes, barrels, casks or drums.
Wire, barbed or telegraph (not copper).
Wagon tires.
Wire rope.

NOTE.—When any of the foregoing articles are shipped together in mixed carloads they shall be charged eighty (80) per cent. of the rates prescribed in Commodity Tariff No. 17-A for the transportation of carload shipments of angle, hoop, rod and band iron.

Machinery, engines and boilers, except carload shipments of machinery, engines and boilers for cotton gins, cotton compresses and cotton seed oil mills.
Matches.
Packing house products.
Paints, dry or in oil.
Peanuts.
Rice.
Rope.
Shot.
Soap, common.
Soda, bi-carbonate of, and soda ash.
Starch.
Stoves and hollow ware, grates, fenders and baskets.
Sugar (except lemon and maple sugar), molasses, syrup, jelly, preserves, fruit butter and mince meat.
Tin plate.

Tobacco, plug, in packages weighing sixty pounds or more.
Tobacco, plug, in packages weighing less than sixty pounds each.
Trunks, empty, N. O. S.
Whisky and alcohol, in wood or glass, invoice value 50 cents or less per gallon.
Woodenware, viz.: Wooden bale boxes, barrel covers, barrel (paper), bowls, brush blocks, buckets, bungs, butter ladles, butter molds, butter trays, butter tubs, churns, clothes horses, clothes
181 pins, clothes racks, firkins, fish kits, handles (axe, broom and mop), kegs, measures, pails (wooden or paper) N. O. S., potato mashers, pastry boards, rolling pins, step and extension ladders N. O. S., tea caddies (wood), trays N. O. S., tubs, washboards, sieves, brooms, cheese and butter boxes, lap boards, skirt boards, lemon squeezers, tooth picks, match splints of wood, rope reels, shot cases, sieve rims, skewers, snow shovels, towel racks, wooden faucets, wooden scoops, wooden spoons, paper bags, blacking, blueing, bottles, brushes, cans, lamp chimneys, coffee mills, crayons, galvanized iron tubs and pails, ink, leads, mops (cotton), shot, paper, rope, pipes (smoking), twine, oil tanks and sifters. The above articles may be shipped together as mixed carloads of woodenware, minimum weight 15,000 pounds per car.

NOTE.—Baskets may be included with above articles of woodenware, carloads.

This order shall take effect September 7, 1900, it being understood that the Commission still holds under advisement for further action the matter of the adjustment herein provided, and will adopt, without further notice, such amendments to the order, respecting the extent of the territory in which the adjustment shall apply, the list of articles which shall be subject to it, and the percentage of the current rates, as actual conditions may require. (Circular No. 1178, effective September 7, 1900.)

NOTE.—The 10-cent rate authorized by Circular No. 1941, to apply on sundry commodities from Texarkana to Clarksville, canceled by Circular No. 2047, effective May 11, 1904.

EXCEPTION.—Box and crate material, in carloads, shall not be subject to the adjustment of rates prescribed by this order. (Circular No. 2445, effective April 7, 1906.)

(Extract from Sixteenth Annual Report of the Railroad Commission of the State of Texas for the year 1907, pages 265, 266 and 267.)

182 In the United States Commerce Court.

No. 68.

THE TEXAS & PACIFIC RAILWAY COMPANY
v.
UNITED STATES and INTERSTATE COMMERCE COMMISSION, Respondent.

Answer of the United States.

(Filed May 29, 1912.)

Comes now the United States, respondent, by its counsel, not waiving but insisting upon the insufficiency in law of the petition, and answers as follows upon information and belief:

I.

The order of the Interstate Commerce Commission sought by this petition to be set aside and annulled, and the report of the commission rendered therewith, and the findings of fact stated in said order and report, were made upon due hearing and due investigation, and upon substantial and sufficient evidence and due consideration thereof.

II.

The Interstate Commerce Commission did not, in any particular, act unreasonably, arbitrarily, or otherwise improperly.

183 III.

The Interstate Commerce Commission expressly found that "The class rates of the Texas Commission within the distances here involved are not too low. This the carriers themselves do not urge." As to whether other rates prescribed by the Texas Commission were or are unreasonably low, respondent denies knowledge or information sufficient to form a belief, and respectfully suggests to the court that the question is immaterial.

IV.

Respondent further denies knowledge or information sufficient to form a belief as to the following allegations of the petition:

(1) As to petitioner's reasons for not attacking, either in the courts or before the Interstate Commerce Commission, the rates set by the Railroad Commission of Texas. (Petition, sec. VIII.)

(2) As to any indirect effect of the order upon other carriers not parties thereto. (Petition, p. 11.)

(3) As to any alleged general disturbance of freight rates, classifications, and traffic movement in southwestern territory, and as to

road Commission of Louisiana, were complainants, and the
186 petitioner herein and certain other carriers were defendants, and alleges that said order was duly served upon said defendants.

The commission further alleges that in the complaint in said proceeding it was alleged that the present class rates maintained, exacted and collected by said petitioner, and by the Houston East & West Texas Railway Co. and the Houston & Shreveport Railroad Co., for the transportation of traffic from Shreveport, in the State of Louisiana, to the points in the State of Texas named in said order, were unjust and unreasonable in and of themselves.

The commission further alleges that in said complaint it was alleged that the rates maintained, exacted and collected by said petitioner, in each instance, for the transportation of traffic in a westerly direction over its line of railway from Shreveport to Dallas in the State of Texas and to points on said line intermediate between Shreveport and Dallas were greater than rates contemporaneously maintained, exacted and collected by said petitioner, in each instance, for the transportation of like traffic equal distances in an easterly direction over said line from Dallas to Shreveport and to said intermediate points between Shreveport and Dallas, and that said adjustment of rates was unduly disadvantageous and prejudicial to Shreveport and unduly advantageous and favorable to Dallas.

The commission further alleges that in said complaint it was alleged that the rates maintained, exacted and collected by the Houston East & West Texas Ry. Co. and the Houston & Shreveport
187 Railroad Co., in each instance, for the transportation of traffic in a westerly and southerly direction over their line of railway from Shreveport to Houston in the State of Texas and to points on said line intermediate between Shreveport and Houston were greater than rates contemporaneously maintained, exacted and collected by said Houston East & West Texas Railway Co. and Houston & Shreveport Railroad Co., in each instance, for the transportation of like traffic equal distances in an easterly and northerly direction over said line from Houston to Shreveport and to said intermediate points between Shreveport and Houston, and that said adjustment of rates between Shreveport on the one hand and Houston on the other hand was unduly disadvantageous and prejudicial to Shreveport and unduly advantageous and favorable to Houston.

The commission further alleges that in said complaint it was alleged that the rates and practices applied by said petitioner and by the Houston East & West Texas Railway Co. and the Houston & Shreveport Railroad Co. in connection with the transportation at Shreveport of interstate shipments of cotton, as compared with the rules and practices applied by said petitioner and by the Houston East & West Texas Railway Co. and the Houston & Shreveport Railroad Co. in connection with the transportation at points in the State of Texas of like shipments of cotton, were unjustly discriminatory and prejudicial to Shreveport and unjustly advantageous and favorable to said points in the State of Texas

188

The commission further alleges that said complaint was duly served upon the parties named therein as defendants; that subsequent to such service the commission accorded to the parties to said proceeding the full hearing provided for in section 15 of the act to regulate commerce; that at said hearing a large volume of testimony and other evidence bearing upon the matters covered by the allegations contained in said complaint were submitted to the commission for its consideration, on behalf of said parties, by their respective counsel; that at said hearing and subsequently, both orally and in briefs filed, all matters involved in said proceeding, including the matters covered by the allegations contained in said complaint as aforesaid, were fully argued, after which they were submitted to the commission for determination, whereupon, the commission determined said matters and made a report which included the commission's decision, conclusions, order and requirements in the premises; that said report, which is included in Exhibit A to the petition herein, was duly served upon said defendants; that upon the evidence aforesaid and as shown in and by said report and said order, the commission found that the present class rates maintained, exacted and collected by said petitioner, and by the Houston East & West Texas Railway Co. and the Houston & Shreveport Railroad Co., for the transportation of traffic from Shreveport to the
189 points in the State of Texas named in said order, were unjust and unreasonable in and of themselves; that the rates maintained, exacted and collected by the petitioner, in each instance, for the transportation of traffic in a westerly direction over its line of railway from Shreveport to Dallas in the State of Texas and to points on said line intermediate between Shreveport and Dallas were greater than rates contemporaneously maintained, exacted and collected by said petitioner, in each instance, for the transportation equal distances of like traffic in an easterly direction over said line from Dallas to Shreveport and to said intermediate points between Shreveport and Dallas, and that said adjustment of rates was unduly disadvantageous and prejudicial to Shreveport and unduly advantageous and favorable to Dallas; that the rates maintained, exacted and collected by the Houston East & West Texas Railway Co. and the Houston & Shreveport Railroad Co., in each instance, for the transportation of traffic in a westerly and southerly direction over their lines of railway from Shreveport to Houston in the State of Texas and to points on said lines intermediate between Shreveport and Houston were greater than rates contemporaneously maintained, exacted and collected by said Houston East & West Texas Railway Co. and Houston & Shreveport Railroad Co., in each instance, for the transportation equal distances of like traffic in an easterly and northerly direction over said lines from Houston to Shreveport and to said
intermediate points between Shreveport and Houston, and
190 that said adjustment of rates between Shreveport on the one hand and Houston on the other hand was unduly disadvantageous and prejudicial to Shreveport and unduly advantageous and favorable to Houston, and that the rules and practices applied by said petitioner and by the Houston East & West Texas Railway Co.

and the Houston & Shreveport Railroad Co. in connection with the concentration at Shreveport of interstate shipments of cotton, as compared with the rules and practices applied by said petitioner and by the Houston East & West Texas Railway Co. and the Houston & Shreveport Railroad Co. in connection with the concentration at points in the State of Texas of other shipments of cotton, were unduly disadvantageous and prejudicial to Shreveport and unduly advantageous and favorable to said points in the State of Texas, and further found that the reasonable class rates to be charged as maxima in the future by said petitioner and by the Houston East & West Texas Railway Co. and the Houston & Shreveport Railroad Co. for two years from and after May 1, 1912, in lieu of the present class rates of said petitioner and of the Houston East & West Texas Railway Co. and the Houston & Shreveport Railroad Co. would be the rates named in said order, and that said findings were and are, and that each of them was and is, fully supported by the evidence submitted to the commission in said proceeding as aforesaid.

The commission further alleges that, in making said report and said order, it considered exhaustively and weighed carefully,
191 in the light of its own knowledge and experience, every fact, circumstance and condition called to its attention on behalf of the parties to said proceeding by their respective counsel, including all matters covered by the allegations contained in the petition herein.

The commission further alleges that the rates named as maxima in said order will furnish to said petitioner and to the Houston East & West Texas Railway Co. and the Houston & Shreveport Railroad Co. full, reasonable, fair, and just compensation for the services performed by them and covered by said rates, and denies each of and all the allegations to the contrary contained in said petition.

The commission further alleges that said order was not made or entered either arbitrarily, or unjustly, or contrary to the relevant evidence, or without evidence to support it; that in making said order it did not exceed the authority which had been duly conferred upon it, or exercise that authority in an unreasonable manner, and that said order is otherwise lawful and valid; and the commission denies each of and all the allegations to the contrary contained in said petition.

Except as herein expressly admitted, the commission denies the truth of each of and all the allegations contained in said petition, in so far as they conflict either with the allegations herein, or with either the statements or conclusions of fact included in said report, which is hereby referred to and made a part hereof.

192 All of which matters and things this respondent is ready to aver, maintain and prove as this honorable court shall direct, and thereby prays that said petition be dismissed.

INTERSTATE COMMERCE COMMISSION,
By P. J. FARRELL, *Its Solicitor*.

CITY OF WASHINGTON,
District of Columbia, ss:

Franklin K. Lane, being duly sworn, deposes and says that he is a member of the Interstate Commerce Commission, the above-named respondent, and makes this affidavit on behalf of said commission; that he has read the foregoing answer, and knows the contents thereof, and that the same is true.

FRANKLIN K. LANE.

Subscribed and sworn to before the undersigned, a notary public within and for the District of Columbia, this 23d day of May, 1912.

GEORGE B. McGINTY,
Notary Public.

[NOTARIAL SEAL.]

193 In the United States Commerce Court.

No. 68. In Equity.

TEXAS & PACIFIC RAILWAY CO., Petitioner,
vs.
THE UNITED STATES OF AMERICA, Respondent.

Petition of Intervention of the St. Louis Southwestern Railway Company and the St. Louis Southwestern Railway Company of Texas.

Filed June 4, 1912.

To the Honorable the Judges of the United States Commerce Court:

The St. Louis Southwestern Railway Company, a corporation duly organized under the laws of the State of Missouri, and authorized to do business under the law of the States of Arkansas and Louisiana, with its principal office in the City of St. Louis, State of Missouri; and the St. Louis Southwestern Railway Company of Texas, a corporation duly organized under the laws of the State of Texas, with its principal office in the City of Tyler, Smith County, Texas (hereinafter called petitioners), by leave of the court join and file this, their petition of intervention in the above entitled
194 and numbered cause, and thereupon complain, and say:

I.

Petitioners are carriers by railroad, engaged in the carriage of freight and passengers between points in the State of Texas and points in the State of Louisiana and various other States and Territories of the United States and foreign countries, and petitioner, St. Louis Southwestern Railway Company of Texas, is engaged in the carriage of freight and passengers between points in the State of Texas, and petitioner, St. Louis Southwestern Railway, is engaged in the transportation of freight and passengers between points in

the State of Louisiana and between points in the State of Arkansas, and between points in the State of Missouri; and your petitioners have been such carriers engaged in the handling of such commerce during the time of all the happenings hereinafter referred to, and were for many years prior thereto. The tariffs (rates, charges, classifications, regulations and practices observed and enforced by each of them in the conduct of the aforesaid business have been legally established, filed and observed, and the said rates, charges, classifications, regulations and practices were, as petitioners are informed and charges, just, fair and reasonable as to all parties, places, communities and States interested therein.

II.

Heretofore, on or about the 8th day of March, 1911, J. J. Meredith, Shelby Taylor and Henry B. Schreiber, constituting the Railroad Commission of Louisiana, filed their petition before the Interstate Commerce Commission against petitioners and other carriers engaged in commerce between points in Louisiana and points
195 in the State of Texas, said cause being number 3918 on the docket of said Interstate Commerce Commission. Said petition was filed on behalf of various merchants, manufacturers, jobbers and other shippers residing in the City of Shreveport. Complaint was made that the defendants had in effect rates between points in Texas on various classes and commodities which were lower than the rates in effect between Shreveport and Texas points for equal distances, and that the Texas points were in competition with Shreveport. It was further alleged: "The said rates between said Shreveport and said competitive points are so unjust, unreasonable and unduly prejudicial and discriminatory as to deprive the various shippers and consignees doing business at Shreveport of the benefits which, under just, reasonable and non-discriminatory rates, would be afforded to such shippers and consignees at said Shreveport, and in many instances are absolutely prohibitive of any commerce between said Shreveport and said points in Eastern Texas. As a result of said unlawful rates, Texas competitors of said Shreveport shippers and consignees are given an undue advantage in said competitive territory in said Eastern Texas."

The petition prayed for an order requiring defendants to cease and desist from the alleged discrimination against Shreveport interests and prescribing just and reasonable rates between Shreveport and the various Texas points in the petition named on all the classes and commodities therein referred to.

Answers were filed to said petition by various defendants, among others by petitioners, which answers, among other things, denied that the Shreveport business interests on whose behalf the said complaint was filed were unable to do business in Texas, as
196 alleged in the petition, because of any rate or rate adjustment applied or enforced by the defendants, and that the rates and regulations complained of were unjust, unreasonable or unduly discriminatory. On the contrary, the said rates and regulations of

the defendants, it was averred, were just, reasonable and non-discriminatory. It was further averred that the rates applicable between points in Texas were prescribed by the Railroad Commission of Texas and the same were improper and unduly low and were applied by the carriers under protest.

By permission of the Interstate Commerce Commission numerous pleas of intervention were filed by shippers and commercial bodies in the State of Louisiana, such shippers and commercial bodies joining in the prayer of complainants.

III.

Testimony was taken and arguments were made in the case, and the same was submitted to the Interstate Commerce Commission, January 26, 1912. Thereafter, on March 11, 1912, the Commission handed down *his* report and order in said cause, four members of the Commission holding with complainants as hereinafter stated and three members dissenting from such holding.

IV.

The opinion of the majority of the Interstate Commerce Commission, after briefly stating the case, sets forth what is referred to as the policy of the Railroad Commission of Texas and, after quoting a number of utterances of the Texas Commission, it, among other things, states:

"There appears to be little question as to the policy of the Texas Commission. It is frankly one of protection to its own indus-
197 tries and communities. We find in the early reports of that Commission, which are quoted at length in the record, evidences that the Texas Commission believed that the interstate carriers operating from the North and the East into Texas were pursuing a policy hostile to the development of that State. The Texas Commission was conscious that it was within the power of these interstate carriers to so adjust rates as to make Texas entirely or largely dependent upon other States and thus restrict the growth of her cities and fix the nature of her industries, the employments of her people, and the character of her civilization so far as these depend on economic and industrial conditions. With this thought in mind, the Texas Commission sought to establish a Texas policy and to make the railroads within that State contribute in the manner believed by her own people to best subserve their own interests."

Further discussion of the policy of the Texas Commission is had and the opinion then states:

The Problem Raised.

"The petition of the complainants is that this Commission 'established the same basis of rates of transportation between Shreveport and East Texas points as are accorded by defendants to Texas competitors of Shreveport interests in the same line of business for the same distances.'"

The conclusion is then announced that the Interstate Commerce Commission has no authority to require an interstate carrier to put into effect from any interstate point a schedule of State made rates as such, that its authority is limited to condemning unreasonable rates and fixing in their stead maximum rates that are just and reasonable, after which the following questions are propounded:

198 "Passing then to the question of discrimination, has this Commission the power to say that whatever rates an interstate carrier makes between points in Texas shall not be exceeded for the same distance under like conditions between Shreveport and Texas points? In other words, may a carrier engaged in interstate commerce discriminate against a city beyond the border of a State by imposing upon that city's traffic rates which deny its shippers access upon equal terms to the communities of an adjoining State?"

The answer is given that the Interstate Commerce Commission has power to prevent discrimination caused by the application of lower State rates than interstate rates where shippers under the two classes of rates come in competition with each other.

The following conclusions are then announced:

"We find:

"(1) That the present rates out of Shreveport to points in Texas on the Texas & Pacific Railway included in the following table, and to points in Texas on the Houston, East & West Texas Railway, are unjust and unreasonable.

"(2) That just and reasonable class rates on these lines of railroad should not exceed the following:

"On the Texas & Pacific Railway.

From Shreveport, La., to—	Distance. Miles.	Class rates in cents per 100 lbs. 1	2	3	4	5	A	B	C	D	E
Waskom, Tex	22.7	18	16	14	12	10	11	9	7	6	5
Jonesville, Tex	26.0	19	17	15	13	11	12	10	8	7	6
Scottsville, Tex	34.1	22	20	18	16	14	15	13	10	8	7
Marshall, Tex	42.0	24	22	20	18	16	17	14	11	9	7
Hallsville, Tex	55.2	29	27	25	23	19	20	17	14	12	9
Longview, Tex	65.7	32	29	27	25	20	21	18	15	13	10
199											
Willow Springs, Tex	69.1	34	31	29	27	21	22	19	16	13	10
Camps, Tex	72.6	35	32	30	28	22	23	20	17	14	11
Gladewater, Tex	78.2	37	34	32	30	23	24	21	18	14	11
Big Sandy, Tex	88.3	40	37	35	32	24	25	22	19	15	12
Hawkins, Tex	94.0	42	39	36	33	25	26	23	20	16	13
Crow, Tex	100.5	44	41	38	35	26	27	24	21	16	13
Mineola, Tex	111.5	48	45	41	39	28	29	26	23	17	14
Grand Saline, Tex	124.6	52	48	44	42	30	31	28	25	18	15
Edgewood, Tex	135.1	54	50	45	43	31	32	29	26	19	16
Wills Point, Tex	142.3	56	52	47	45	32	33	30	26	19	16
Elmo, Tex	151.4	58	54	49	47	33	34	31	27	19	16
Terrell, Tex	157.9	60	56	51	49	34	35	32	28	20	16
Lawrence, Tex	161.9	61	56	51	49	35	36	33	28	20	16
Forney, Tex	169.4	63	58	52	50	36	37	34	29	20	16
Mesquite, Tex	177.6	65	60	54	52	37	38	35	29	21	16
Orphans Home, Tex	182.3	66	61	55	53	37	38	35	30	21	16

"On the Houston, East & West Texas Railway.

From Shreveport, La., to—	Distance. Miles.	Class rates in cents per 100 lbs. 1	2	3	4	5	A	B	C	D	E
Joaquim, Tex	42.8	25	23	21	19	17	18	15	12	10	8
Teneha, Tex	54.3	29	27	25	23	19	20	17	14	12	9
Timpson, Tex	63.9	32	29	27	25	20	21	18	15	13	10
Garrison, Tex	72.3	35	32	30	28	22	23	20	17	14	11
Appleby, Tex	83.3	38	35	33	30	23	24	21	18	14	11
Nacogdoches, Tex	92.4	41	38	35	32	25	26	23	20	16	13
Angelina, Tex	104.3	45	42	39	36	27	28	25	22	17	14
Lufkin, Tex	112.5	48	45	41	39	28	29	26	23	17	14
Renova, Tex	127.6	52	48	44	42	30	31	28	25	18	15
Corrigan, Tex	137.7	55	51	46	44	32	33	30	26	19	16
200											
Moscow, Tex	143.2	56	52	47	45	32	33	30	26	19	16
Valda, Tex	147.0	57	53	48	46	33	34	31	27	19	16
Leggett, Tex	151.0	58	54	49	47	33	34	31	27	19	16
Livingston, Tex	159.2	60	56	51	49	34	35	32	28	20	16
Goodrich, Tex	167.3	62	57	51	49	35	36	33	28	20	16
Shepherd, Tex	175.4	64	59	53	51	36	37	34	29	21	16
Cleveland, Tex	187.5	67	62	56	54	38	39	36	30	21	16
Midline, Tex	194.2	69	64	58	56	39	40	37	31	22	17
New Caney, Tex	203.4	71	65	58	56	40	41	37	31	22	17
Pauli, Tex	208.8	72	66	59	57	40	41	38	32	22	17
Humble, Tex	213.6	73	67	59	57	41	42	38	32	22	17
Houston, Tex	230.7	77	70	60	58	43	44	39	33	23	17

"(3) That such carriers maintain higher rates from Shreveport to points in Texas than are maintained from cities within Texas to such points under substantially similar conditions and circumstances.

"(4) That thereby an unlawful and undue preference and advantage is given to such Texas cities, and a discrimination that is undue and unlawful is effected against Shreveport.

"(5) That an order should be issued directing said carriers to establish and maintain rates no higher than those above found to be reasonable out of Shreveport to the Texas points named under Western Classification.

"(6) That the Texas & Pacific Railway Company shall cease and desist from charging higher rates upon any commodity from Shreveport into Texas than are contemporaneously charged for the carriage of such commodity from Dallas toward Shreveport for an equal distance.

"(7) That the Houston, East & West Texas Railway Company shall cease and desist from charging higher rates upon any
201 commodity from Shreveport into Texas than are contemporaneously charged for the carriage of such commodity from Houston toward Shreveport for an equal distance.

"It will be the duty of the carriers under such order to duly and justly equalize the terms and conditions upon which they will extend transportation to traffic of a similar character moving into Texas from Shreveport with that moving wholly within Texas. But in effecting such equalization the class scale of rates prescribed above shall not be exceeded.

"As to the matter of the concentration of Texas cotton at Shreveport specifically dealt with in the complaint we find the carriers pursuing a policy with respect to Texas cotton within Texas which they do not apply to Shreveport. This discrimination is likewise disapproved. Whatever is the practice pursued respecting the concentration of cotton within Texas the carrier shall be ordered to apply at Shreveport, provided the practice adopted shall be one justifiable under the act to regulate commerce and applicable fairly under the conditions elsewhere on the lines of the carriers."

Two concurring opinions were filed and three dissenting opinions. The dissenting opinions announce the proposition that the Interstate Commerce Commission has no authority to control State rates or to adopt State rates as measures of interstate rates unless the interstate rates complained of are unreasonable and the State rates are reasonable, and, therefore, the order of the Commission was without lawful authority, null and void.

In accordance with the opinion of the majority, an order was entered making effective the conclusions so announced, the same to become operative on or before May 1, 1912, and to remain
202 in force for a period of not less than two years thereafter. The effective date of said order was later, on April 19, 1912, extended to June 1, 1912, and later to July 1, 1912.

A copy of the report and order of the Interstate Commerce Commission in said cause No. 3918 is attached to the petition of Texas & Pacific Railway Company, hereinafter called original petitioner, and reference is here made thereto and the Court is asked to consider the same as if fully set out herein.

V.

While the order of the Interstate Commerce Commission is by its terms directed only against the original petitioners and The Houston East & West Texas Railway Company and Houston & Shreveport Railroad Company, petitioner, is interested in the controversy or question before the Interstate Commerce Commission and is affected by said order in this:

1. Your petitioner, St. Louis Southwestern Railway Company, owns and operates lines of railway from St. Louis, Missouri, to Little Rock and Texarkana, Arkansas, Shreveport, Louisiana, Memphis, Tennessee, and intermediate points, as well as other points on lines in the States of Missouri, Illinois and Arkansas;

Your petitioner, St. Louis Southwestern Railway Company of Texas, owns and operates lines of railway from Texarkana, Texas, to Sherman, Fort Worth, Dallas, Hillsboro, Gatesville and Lufkin, Texas, including all intermediate points. That both of said companies have so operated said lines of railway for more than ten years; that the lines of railway of said two companies connect at the State line between Texas and Arkansas at Texarkana, which is a border city; that the through trains operated over said lines of rail-
203 way from points on the lines of the St. Louis Southwestern Railway Company to points on the lines of the St. Louis Southwestern Railway Company of Texas, and through trains on the lines of the St. Louis Southwestern Railway Company of Texas to points on the St. Louis Southwestern Railway Company are operated by your petitioners in conjunction and are transferred from one to the other at the State line at the City of Texarkana, aforesaid. The lines of railway owned by your petitioners are commonly known and designated as the "Cotton Belt System." Your petitioners are each engaged in interstate and foreign commerce in the States above mentioned, and each is engaged in intrastate commerce in the States where its lines are situated, and have been so engaged for many years; that the tariffs, rates, charges, classifications, regulations and practices observed and enforced by your petitioners in the conduct of interstate and foreign commerce during the time they have been conducting such business has been legally established, filed and observed; that the said tariffs, rates, charges, classifications, regulations and practices were, as your petitioners are informed and believe and charge the fact to be, just, fair and reasonable as to all parties, places, commodities, states and communities interested therein.

2. The lines of the Cotton Belt System, as it is called, extend from St. Louis, Missouri, and Memphis, Tennessee, to Sherman, Hillsboro, Gatesville and Lufkin and intermediate points, in Texas, and Shreveport, Louisiana, and intermediate points, and a large part of the revenues of the lines which compose said Cotton Belt System are derived from the handling of business interchanged between your petitioners at Texarkana, Texas, which originate at
St. Louis and Memphis, or moving on rates based on such
204 points, and much other revenue accruing to the system is derived from business handled in connection with other rail-

way companies through Chicago, Little Rock, Memphis, Vicksburg, New Orleans, Galveston and other gateways. For many years rates from all defined territories into Southwestern territory, which includes the territory affected by the order in cause No. 3918, have been based on St. Louis, such rates being made by adding or deducting certain differentials to or from the St. Louis rates. The rates from Shreveport have, during all this time, been a differential under the St. Louis rate. The relation of rates from Shreveport to Texas points (not only those mentioned in the aforesaid order but practically all other points in the State) as such that because of the provisions of the Act to Regulate Commerce, and especially the fourth section thereof, and because of the natural and competitive conditions as to water rates, rail rates and commercial competition, any material reduction in the rates from Shreveport to the Texas points described in said order of the Interstate Commerce Commission will necessarily reduce rates on business moving through the gateways mentioned (*a*) to the territory so described; (*b*) to practically all other points in the State of Texas, and (*c*) to various points in other States in the Southwest and in the Republic of Mexico, all of which reductions in rates will result in a decrease in the revenues of petitioner and of the system of which it forms a part. If the Shreveport rates are not met a large part of the business now handled by said Cotton Belt System will move through Shreveport and over other lines on account of the readjustment of commercial conditions to meet the changed rate situation.

205 VI.

In the aforesaid petition filed before the Interstate Commerce Commission complaint is made of both the class and commodity rates from Shreveport upon the ground that they are unreasonable in themselves, but the burden of the complaint is that the rates are discriminatory against Shreveport and the discrimination is alleged to arise because of the fact that the defendants apply lower rates between points in Texas than are applied from Shreveport to Texas points for equal distances. No substantial evidence was offered on the hearing to support the contention that the rates complained of, either class or commodity, were unjust and unreasonable in and of themselves, and, as appears from its report, the Interstate Commerce Commission does not find that the several commodity rates complained of were unjust or unreasonable. The Commission's finding is that the rates from Shreveport are unjustly discriminatory under Section 3 of the Act to Regulate Commerce because of lower rates for equal distances in Texas, and the order requires the adoption of the Texas rates, not because the Texas rates are reasonable or just or because the Shreveport rates are unreasonable or unjust, but because of the alleged discrimination. While the Commission has power, under some circumstances, to condemn rates that are discriminatory, its authority in establishing other rates in their stead, petitioner avers, is limited to the establishment of rates that are, under the facts of the case, just and reasonable in and of themselves.

Since the Commission did not, in this instance, pass upon the reasonableness of the commodity rates complained of in cause No. 3918 or find that the rates applied by the defendants between points in
Texas were just or reasonable in and of themselves, its action
206 in making the said order was purely arbitrary, and, being arbitrary, its effect is to deprive petitioner and the other carriers interested of their property without due process of law, contrary to the fifth amendment to the Constitution of the United States.

VII.

The commodity rates adopted by the Interstate Commerce Commission in the said order as a basis for the rates from Shreveport to the Texas points therein named are rates prescribed by the Railroad Commission of Texas, which is the rate-making body in Texas. The law creating the Railroad Commission and defining its powers and duties and fixing the penalties for a failure to comply with its orders and regulations is sufficiently set forth in paragraph VI, pages 15 to 18, of the petition of the original petitioners, and Exhibit "B" thereto, to which paragraph and exhibit reference is here made, and petitioner asks that they be considered as fully as if set out at length herein.

The rates so adopted for observance by The Texas & Pacific Railway Company are the rates made under circular No. 1178 of the Railroad Commission of Texas, effective September 7, 1900, as amended by circular No. 1531, effective February 10, 1902, the nature of which is sufficiently explained in paragraph VII, pages 18 to 20, of the said petition, and said circular No. 1178, as so amended is set out at length in Exhibit "C" to said petition, to which paragraph and exhibit reference is here made, and petitioner asks that they be considered as fully as if set out at length in this connection.

The general mileage scale of rates adopted by the Railroad Commission of Texas, petitioner avers, is too low, and said rates, considering the volume of traffic handled, the short distances
207 at which the maximum rates are reached and the large scope of territory over which the maximum rates apply, are unjust and unreasonable, but the basis of rates prescribed by said circular No. 1178 of said Railroad Commission (the rates thereunder being twenty per cent less than the standard mileage rates enforced in Texas) are even more unjust and unreasonable. All of said rates were established over the protest of petitioner and the other carriers interested, and they are unwillingly applied by them, but the Railroad Commission being the rate-making body in Texas they have no authority to change the rates and must, subject to severe penalties, apply them until they are set aside.

That part of petitioner, St. Louis Southwestern Railway Company of Texas' line extending from Tyler to Lufkin, Texas, was required by it in 1901, under an Act of the Twenty-sixth Legislature of the State of Texas (page 187, General Laws of Texas, 1899), Section 7 of which provides that "by accepting the provisions of this Act, the St. Louis Southwestern Railway Company of Texas agrees to abide

by the rates, rules and regulations of the Railroad Commission of the State of Texas until the same are set aside by a court of competent jurisdiction on final hearing." By reason of this provision and many other considerations—among them the difficulty of attacking a single rate established by the Commission, the difficulty of securing the consent of all the lines interested to attack the whole body of the Commission's rates and the futility of an effort to do this by a single line, the desire to avoid litigation and the confusion, strife and unrest incident to a suit to set aside the whole body of the Commission's rates, and the hope that at some time in the near future the volume of business handled by petitioner, St. Louis
208 Southwestern Railway Company of Texas, would so increase as to make the Commissioner's rates yield it a fair return upon its investment, which hope, however, has not been realized—it has submitted to the said unjust and unreasonable rates so prescribed and enforced by the Railroad Commission of Texas. Said rates, however, do not, as the record in this case shows, afford it a fair return upon its investment, notwithstanding the fact that its property is economically managed and it secures all the revenue from the operation thereof that it is able to secure under such rates and the rates prescribed in the tariffs on file with the Interstate Commerce Commission issued by it or to which it is a party. Its total revenues from the operation of its road for the year ending June 30, 1911, were $4,212,379.92. Its total operating expenses for said period were $4,046,967.56, which left a net operating revenue of $165,412.36. For said year its property was valued for taxation purposes by the State Tax Board of the State of Texas at $13,248,000.00, which sum, it avers, is not equal to the fair and reasonable value thereof. Upon information and belief, petitioner, St. Louis Southwestern Railway Company of Texas, avers that its line is reasonably worth about $30,000.00 per mile, and that it owns 703.3 miles of lines, and a reasonable return thereon would be 7 per cent on the fair and reasonable value of its property. Out of the net operating revenue there had to be paid taxes, hire of equipment, rents of various kinds and interests on bonded indebtedness, all of which amounted to $500,494.31, leaving a deficit of $306,876.51 as the result of the year's operation. It further avers that it has no reasonable prospect of receiving a better return upon its investment for the current year.

The rates so prescribed by the Railroad Commission of
209 Texas, therefore, being unjust and unreasonable, and they being unwillingly applied by it and the other carriers affected thereby, the Interstate Commerce Commission had no power or authority to make them the basis of interstate rates from Shreveport to points in Texas, for, as previously stated, its authority is limited to the establishment of just and reasonable rates.

Your petitioner, St. Louis Southwestern Railway Company, owns 621.98 miles of railway, which it operates, and which on information and belief it avers is worth the reasonable value of $35,000.00 per mile. It has other operated mileage which it does not own, and

the operating contracts thereon are of large value. It owns other property and has other assets of large value, the details of all of which will be shown on the hearing hereof. It needs additional terminal facilities at various points, as well as additions and betterments, including rolling stock and other necessary improvements which cannot be made out of its earnings and leave a reasonable return on the reasonable value of all of its property.

That the St. Louis Southwestern Railway Company of Texas needs improvements in its grade, such as reducing grades, eliminating curves; it also needs to acquire additional terminals at various points, as well as increase in its rolling stock and other improvements, none of which can be done out of its earnings and leave any return on the value of its property.

That these conditions on both of said lines have obtained for many years, notwithstanding they have been economically and properly administered and operated.

VIII.

The said order of the Interstate Commerce Commission requires that the railway companies therein named cease and desist from charging higher rates upon any commodity from Shreveport into Texas than are contemporaneously charged for the carriage
210 of such commodity from the Texas points named towards Shreveport for an equal distance. The State of Texas has a classification prescribed by the Railroad Commission of Texas in which many articles are differently classed from the classification provided in the Western Classification and under the Texas classification the carload minima are frequently less than under the Western Classification, and the mixtures are different under the two classifications. By reason of these facts the movement of freight under the Texas classification is more onerous upon the carriers than is the movement of freight under the Western Classification, and the revenues received from traffic handled under the Texas classification are less than the revenues from similar traffic handled under the Western Classification. The Interstate Commerce Commission adopts the Western Classification as to freight carried from Western Classification territory into the State of Louisiana as well as into the State of Texas, and the Railroad Commission of Louisiana adopts said Western Classification for freight moving between points in that State, but under the order of said Commission herein complained of petitioners and the other carriers affected thereby will be compelled to adopt the Texas classification as to traffic moving from Shreveport to the defined Texas points, thereby causing a discrimination against the carriers subject to or affected by the order and against the shippers residing on other lines and at points other than Shreveport.

IX.

By reason of your petitioners having a long haul, there is a very light traffic over their lines from Shreveport to points directly affected by said order of the Interstate Commerce Commission. For

the calendar year ending December 31, 1911, your petitioners
211 estimate that if they had handled the traffic which — did under the proposed reduction of rates maintained in said order, that they each would have suffered a loss of about $407.46.

By reason of the facts pleaded and set out herein a reduction in the rates from Shreveport to the points mentioned in the order will of necessity effect a reduction in rates on practically all classes and commodities to the points in said order named, to the entire State of Texas, and to points in many other States in the Southwest and in the Republic of Mexico, not only on business moving through Shreveport, but on business through Memphis, St. Louis and the other gateways and territories herein mentioned, the loss in revenue from which to your petitioners would be not less than $100,000.00 each per annum. All of which will be shown in detail upon the hearing hereof.

The rates on a large amount of traffic in the territory along and adjacent to the Mississippi River, petitioner avers upon information and belief are very low, because the rates on such traffic are affected by water competition. The City of Shreveport is situated on the Red River, which is a tributary of the Mississippi, and Shreveport is connected with Mississippi River gateways by several lines of railroad. By virtue of its location it is accorded lower rates on inbound freight than are accorded to distributing points in Texas named in said cause No. 3978. When these low inbound rates are added to the outbound rates from Shreveport it will be found, as petitioner is informed and believes, and upon such information and belief alleges the fact to be, that the total transportation charge on the commodities and classes mentioned and described in said order under existing rates to the territory mentioned and described
212 therein is not materially higher than the total transportation charge on the same classes and commodities handled into the same territory from distributing points in Texas directly affected by said order. In many instances the total transportation charges through Shreveport are less. The territory that Shreveport can now reach on such combination is substantially as large as that which can be reached from Dallas. If the said order of the Interstate Commerce Commission is enforced, on the great volume of freight traffic referred to therein the total transportation charge into and out of Shreveport to the territory directly affected by said order will be largely reduced, and, petitioner is informed and believes, and on such information and belief alleges the fact to be, will be much lower than the total transportation charge on freight traffic which moves into and out of the Texas distributing points to the said territory, and thereby a large amount of traffic now handled by petitioner St. Louis Southwestern Railway Company of Texas, from Texas distributing points to said territory will be transferred to the business men of Shreveport and in consequence thereof this will entail upon petitioner large and substantial losses in freight and revenue, and will seriously affect such Texas distributing points.

The Railroad Commission of Texas has continuously exercised the powers conferred by the act under which it was created and the amendments thereof and supplements thereto, in the fixing of rates

within the State of Texas for the distribution therein of the products of manufacturers and wholesalers and others within the State of Texas, and has continuously exercised the power of making
213 emergency rates within the State, of Texas when rates into that State from points beyond the State were reduced to such extent as, in the judgment of the Commission, to affect injuriously the interests of manufacturers, wholesalers, jobbers and others within the State. If the reductions made by said order in cause No. 3918 should be enforced the Railroad Commission of Texas, petitioner avers on information and belief, will further reduce the rates in Texas, which are now too low, in order to meet the competition created by the order herein complained of. Such action on its part will place petitioner, St. Louis Southwestern Railway Company of Texas, and the other carriers interested between the upper and the nether millstones, and by reason of the orders of the Interstate Commerce Commission reducing interstate rates to prevent competition, followed by orders of the Railroad Commission making reductions to prevent competition, and the inability of petitioner, St. Louis Southwestern Railway Company of Texas, and the other Texas carriers to increase the Texas State rates, they will be wholly without remedy.

Wherefore, in view of the premises and the matters and things hereinbefore set forth, petitioner says:

1. That the order of the Interstate Commerce Commission in said cause No. 3918, fixing commodity rates for shipments from Shreveport, Louisiana, to the points in Texas therein named, was made without power or authority, either directly or indirectly, conferred upon it by the Act to Regulate Commerce or any amendment thereof or supplement thereto, or by any other law of the United States, the Commission having no jurisdiction over the rates in Texas and the discrimination prohibited by Section 3 of the Act to Regulate Commerce and which the Commission is given power to prevent
214 by Section 15 of said Act, being a discrimination in interstate rates, and the power of the Commission in the substitution of rates for rates condemned being limited to the establishment of rates that are just and reasonable in and of themselves. The said order, therefore, petitioner avers upon information and belief, is void and is in violation of subdivision 3 of Section 8 of Article 1 of the Constitution of the United States and the tenth amendment to the Constitution of the United States and the Act to Regulate Commerce, especially Section 1 thereof, and the amendments thereto.

2. That if the Interstate Commerce Commission has power in any case to remove a discrimination caused by the application of different rates for the handling of State traffic and interstate traffic, such power does not exist where the State rates are made, not by the carriers, but by a governmental agency, and the carriers have no authority to change or modify them, and where, as in this case, the State rates are unduly low and are unjust and unreasonable.

3. That said order of the Interstate Commerce Commission is, for the reasons hereinbefore set forth, unjust, unreasonable and discriminatory, and therefore void.

4. That said order in so far as it undertakes to fix and establish commodity rates is invalid and void for the reason that there was no evidence before the Commission that the commodity rates complained of were unjust or unreasonable and the Commission wholly fails to find that they were unjust or unreasonable, and there was no evidence that the rates established in lieu thereof were just or reasonable and the Commission wholly fails to find that said rates were just or reasonable. The order, therefore, deprives petitioners and the other carriers affected thereby of their property without due process of law and takes private property for public use without just compensation, in violation of the fifth amendment to the Constitution of the United States.

215

XI.

Wherefore, petitioners pray that due service of this petition be made on respondent herein commanding it to answer the matter hereof (but not under oath, answer under oath being expressly waived); that notice of the application for injunction hereby made be duly served on the respondent, on the Attorney General of the United States, and on the Interstate Commerce Commission; that upon the hearing hereof the said order of the Interstate Commerce Commission dated March 11, 1912, be in all things enjoined and set aside and held for naught; that the Interstate Commerce Commission, its members, agents, attorneys, servants and representatives be forever enjoined from enforcing said order or taking any steps or instituting any proceedings for the enforcement thereof, and that the said rates so established by the Commission be declared to be unjust and unreasonable. Petitioners also pray for such general and special relief as the equities of the case may warrant.

E. B. PERKINS,
S. H. WEST,
ROY A. BRITTON,
DANIEL UPTHEGROVE,
Solicitors for Petitioners, St. Louis Southwestern Railway Company and St. Louis Southwestern Railway Company of Texas.

E. B. PERKINS,
S. H. WEST,
Of Counsel.

216 THE STATE OF MISSOURI,
City of St. Louis:

I, J. D. Watson, being duly sworn, state upon oath that I am the Assistant General Freight Agent of the St. Louis Southwestern Railway Company, one of the petitioners in the above entitled and numbered cause, and, as such, am authorized to make this affidavit; and that I have read the foregoing petition, and the allegations of fact set forth therein are true, and the allegations made upon information and belief I believe to be true.

J. D. WATSON.

Sworn to and subscribed by the said J. D. Waston before me, the undersigned authority, this the 10th day of June, A. D. 1912.

[Seal Margaret Lally, Notary Public, City of St. Louis, Mo.]

MARGARET LALLY,
Notary Public, City of St. Louis, Mo.

My commission expires Jan'y 11, 1913.

217 In the United States Commerce Court.

No. 68.

THE TEXAS & PACIFIC RAILWAY CO., Petitioner,
v.
THE UNITED STATES OF AMERICA.

Order of Intervention.

Entered June 4, 1912.

The St. Louis Southwestern Railway Co., St. Louis Southwestern Railway Co. of Texas and Missouri, Kansas and Texas Ry. Co. of Texas having filed and presented their petition for intervention herein and it appearing to the Court from the said petition that the petitioners have shown that they have sufficient interest in the proceedings herein to entitle them to intervene and be heard by their counsel:

It is ordered, That the St. Louis Southwestern Railway Co., St. Louis Southwestern Ry. Co. of Texas, Missouri, Kansas & Texas Ry. Co. of Texas be and they are hereby allowed to intervene and become parties intervener and to be heard by their counsel in all the proceedings had and taken in the above entitled cause, the Court reserving the right at all times hereafter to enter such other and further order or orders concerning the right of the said interveners to appear and be heard herein, and to enter such rule or rules concerning the pleadings of the said interveners and their course of procedure, as to the court shall seem wise and proper.

By the Court:

MARTIN A. KNAPP,
Presiding Judge.

218 In the United States Commerce Court.

In Equity. No. 68.

TEXAS & PACIFIC RAILWAY COMPANY, Petitioner; St. Louis Southwestern Railway Company, and St. Louis Southwestern Railway Company of Texas, Intervening Petitioners,

v.

THE UNITED STATES OF AMERICA, Respondent, and INTERSTATE COMMERCE COMMISSION et al., Intervening Respondents.

Answer of the Interstate Commerce Commission to Petition of Intervention of St. Louis Southwestern Railway Company and St. Louis Southwestern Railway Company of Texas.

Filed June 27, 1912.

The Interstate Commerce Commission, one of the parties respondent in the above-entitled cause, now and at all times hereafter saving and reserving to itself all and all manner of benefit and advantage of exception to the many errors and insufficiencies in the petitioner's petition contained, for answer thereunto, or unto so much or such parts thereof as this respondent is advised is material for it to make answer unto, answers and says:

This respondent, which for convenience will be referred
219 to hereinafter as the Commission, admits that it made and entered the order dated March 11, 1912, and included in Exhibit A to the original petition herein, in a proceeding then pending before it, wherein J. J. Meredith, Shelby Taylor, and Henry B. Schreiber, constituting the Railroad Commission of Louisiana, were complainants, and the petitioner herein and certain other carriers were defendants, and alleges that said order was duly served upon said defendants.

The Commission further alleges that in the complaint in said proceeding it was alleged that the present class rates maintained, exacted, and collected by the Houston, East & West Texas Railway Co. and the Houston & Shreveport Railroad Co., and by the Texas & Pacific Railway Co., for the transportation of traffic from Shreveport, in the State of Louisiana, to the points in the State of Texas named in said order, were unjust and unreasonable in and of themselves.

The Commission further alleges that in said complaint it was alleged that the rates maintained, exacted, and collected by the Texas & Pacific Railway Co., in each instance, for the transportation of traffic in a westerly direction over its line of railway from Shreveport to Dallas in the State of Texas and to points on said line intermediate between Shreveport and Dallas were greater than rates contemporaneously maintained, exacted, and collected by said Texas &

Pacific Railway Co., in each instance, for the transportation
220 of like traffic equal distances in an easterly direction over said line from Dallas to Shreveport and to said intermediate points between Shreveport and Dallas, and that said adjustment of

rates was unduly disadvantageous and prejudicial to Shreveport and unduly advantageous and favorable to Dallas.

The Commission further alleges that in said complaint it was alleged that the rates maintained, exacted, and collected by the Houston, East & West Texas Railway Co. and the Houston & Shreveport Railroad Co., in each insance, for the transportation of traffic in a westerly and southerly direction over their lines of railway from Shreveport to Houston in the State of Texas and to points on said lines intermediate between Shreveport and Houston were greater than rates contemporaneously maintained, exacted, and collected by said Houston, East & West Texas Railway Co. and Houston & Shreveport Railroad Co., in each instance, for the transportation of like traffic equal distances in an easterly and northerly direction over said lines from Houston to Shreveport and to said intermediate points between Shreveport and Houston, and that said adjustment of rates between Shreveport on the one hand and Houston on the other hand was unduly disadvantageous and prejudicial to Shreveport and unduly advantageous and favorable to Houston.

The Commission further alleges that in said complaint it was alleged that the rules and practices applied by the Texas &
221 Pacific Railway Co., and by the Houston, East & West Texas Railway Co. and the Houston & Shreveport Railroad Co., in connection with the concentration at Shreveport of inter-state shipments of cotton, as compared with the rules and practices applied by said Texas & Pacific Railway Co., and by the Houston, East & West Texas Railway Co. and the Houston & Shreveport Railroad Co. in connection with the concentration at points in the State of Texas of other shipments of cotton, were unduly disadvantageous and prejudicial to Shreveport and unduly advantageous and favorable to said points in the State of Texas.

The Commission further alleges that said complaint was duly served upon the parties named therein as defendants; that subsequent to such service the Commission accorded to the parties to said proceeding the full hearing provided for in section 15 of the act to regulate commerce; that at said hearing a large volume of testimony and other evidence bearing upon the matters covered by the allegations contained in said complaint were submitted to the Commission for its consideration, on behalf of said parties, by their respective counsel; that at said hearing and subsequently, both orally and in briefs filed, all matters involved in said proceeding, including the matters covered by the allegations contained in said complaint as aforesaid, were fully argued, after which they were submitted to the Commission for determination, whereupon the Commission
222 determined said matters and made a report which included the Commission's decison, conclusions, order, and requirements in the premises; that said report, which is included in Exhibit A to the petition herein, was duly served upon said defendants; that upon the evidence aforesaid and as shown in and by said report and said order, the Commission found that the present class rates maintained, exacted, and collected by said Texas & Pacific Railway Co., and by the Houston, East & West Texas Railway Co. and the Houston & Shreveport Railroad Co., for the transportation of traffic from

Shreveport to the points in the State of Texas named in said order, were unjust and unreasonable in and of themselves; that the rates maintained, exacted, and collected by said Texas & Pacific Railway Co., in each instance, for the transportation of traffic in a westerly direction over its line of railway from Shreveport to Dallas in the State of Texas and to points on said line intermediate between Shreveport and Dallas were greater than rates contemporaneously maintained, exacted, and collected by said Texas & Pacific Railway Co., in each instance, for the transportation equal distances of like traffic in an easterly direction over said line from Dallas to Shreveport and to said intermediate points between Shreveport and Dallas, and that said adjustment of rates was unduly disadvantageous and prejudicial to Shreveport and unduly advantageous and favorable to Dallas; that the rates maintained, exacted, and collected by
223 the Houston, East & West Texas Railway Co. and the Houston & Shreveport Railroad Co., in each instance, for the transportation of traffic in a westerly and southerly direction over their lines of railway from Shreveport to Houston in the State of Texas and to points on said lines intermediate between Shreveport and Houston were greater than rates contemporaneously maintained, exacted, and collected by said Houston, East & West Texas Railway Co. and Houston and Shreveport Railroad Co., in each instance, for the transportation equal distances of like traffic in an easterly and northerly direction over said lines from Houston to Shreveport and to said intermediate points between Shreveport and Houston, and that said adjustment of rates between Shreveport on the one hand and Houston on the other hand was unduly disadvantageous and prejudicial to Shreveport and unduly advantageous and favorable to Houston, and that the rules and practices applied by said Texas & Pacific Railway Co. and by the Houston, East & West Texas Railway Co. and the Houston & Shreveport Railroad Co. in connection with the concentration at Shreveport of interstate shipments of cotton, as compared with the rules and practices applied by said Texas & Pacific Railway Co., and by the Houston, East & West Texas Railway Co., and the Houston & Shreveport Railroad Co. in connection with the concentration at points in the State of Texas of other shipments of cotton, were unduly disadvantageous
224 and prejudicial to Shreveport and unduly advantageous and favorable to said points in the State of Texas, and further found that the reasonable class rates to be charged as maxima in the future by said Texas & Pacific Railway Co., and by the Houston, East & West Texas Railway Co. and the Houston & Shreveport Railroad Co. for two years from and after May 1, 1912, in lieu of the present class rates of said Texas & Pacific Railway Co., and of the Houston, East & West Texas Railway Co. and the Houston & Shreveport Railroad Co. would be the rates named in said order, and the Commission alleges that said findings were and are, and that each of them was and is, fully supported by the evidence submitted to the Commission in said proceeding as aforesaid.

The Commission further alleges that, in making said report and said order, it considered exhaustively and weighed carefully, in the light of its own knowledge and experience, every fact, circumstance,

and condition called to its attention on behalf of the parties to said proceeding by their respective counsel, including all matters covered by the allegations contained in the petition of intervention herein of the St. Louis Southwestern Railway Co. and St. Louis Southwestern Railway Co. of Texas.

The Commission further alleges that the rates named as maxima in said order will furnish to said Texas & Pacific Railway Co. and to the Houston, East & West Texas Railway Co. and the Houston & Shreveport Railroad Co. full, reasonable, fair, and just com-
225 pensation for the services performed by them and covered by said rates, and denies each of and all the allegations to the contrary contained in said petition of intervention.

The Commission further alleges that said order was not made or entered either arbitrarily or unjustly, or contrary to the relevant evidence, or without evidence to support it; that in making said order it did not exceed the authority which had been duly conferred upon it or exercise that authority in an unreasonable manner, and that said order is otherwise lawful and valid; and the Commission denies each of and all the allegations to the contrary contained in said petition of intervention.

Except as herein expressly admitted, the Commission denies the truth of each of and all the allegations contained in said petition of intervention in so far as they conflict either with the allegations herein or with either the statements or conclusions of fact included in said report, which is hereby referred to and made a part hereof.

All of which matters and things this respondent is ready to aver, maintain, and prove as this honorable court shall direct, and thereby prays that said petition of intervention be dismissed.

INTERSTATE COMMERCE COMMISSION.
By P. J. FARRELL, *Its Solicitor.*

226 CITY OF WASHINGTON,
District of Columbia, ss:

Franklin K. Lane, being duly sworn, deposes and says that he is a member of the Interstate Commerce Commission, the above-named respondent, and makes this affidavit on behalf of said Commission; that he has read the foregoing answer, and knows the contents thereof, and that the same is true.

FRANKLIN K. LANE.

Subscribed and sworn to before the undersigned, a notary public within and for the District of Columbia, this 27th day of June, 1912.

[NOTARIAL SEAL.] H. S. MILSTEAD,
Notary Public.

227 In the United States Commerce Court.

No. 68.

THE TEXAS & PACIFIC RAILWAY COMPANY, Petitioner,
vs.
UNITED STATES OF AMERICA, Respondent, and INTERSTATE COMMERCE COMMISSION, Intervening Respondent.

Motion on Behalf Railroad Commission of Louisiana for Permission to Intervene as Party Respondent and to be Represented by Counsel in the Above Entitled Suit.

(Filed June 4, 1912.)

Comes now the Railroad Commission of Louisiana and moves this Honorable Court for an order granting permission to it to enter appearance, to be made party intervener, as respondent, and to be represented by counsel in the above entitled suit, and as ground for such motion rspectfully shows that it, through its constituent members, J. J. Meredith, Shelby Taylor and Henry B. Schreiber, was complainant in the complaint filed before the Interstate Commerce Commission on or about March 8, 1911, I. C. C. Docket, 3918, in which case said Interstate Commerce Commission made the order attacked in the above entitled cause, and that it is vitally interested in having the order of the said Interstate Commerce Commission sustained.

THE RAILROAD COMMISSION
OF LOUISIANA.
By R. G. PLEASANT.
W. M. BARROW.
LUTHER M. WALTER.

228 In the United States Commerce Court.

No. 68.

THE TEXAS & PACIFIC RAILWAY COMPANY, Petitioners,
v.
UNITED STATES OF AMERICA.

Order of Intervention.

Entered June 4, 1912.

The Railroad Commission of Louisiana having filed and presented its petition for intervention herein and it appearing to the Court from the said petition that the petitioner has shown that it has sufficient interest in the proceedings herein to entitle it to intervene and be heard by its counsel:

It is ordered, That the Railroad Commission of Louisiana be and it is hereby allowed to intervene and become a party intervener and to be heard by its counsel in all the proceedings had and taken in the above entitled cause, the Court reserving the right at all times hereafter to enter such other and further order or orders concerning the right of the said intervener to appear and be heard herein, and to enter such rule or rules concerning the pleadings of the said intervener and its course of procedure, as to the court shall seem wise and proper.

By the Court:

MARTIN A. KNAPP,
Presiding Judge.

229 *Journal Entry.*

Proceedings of June 27, 1912.

No. 67.

HOUSTON, EAST & WEST TEXAS RY. CO. et al., Petitioners,
vs.
UNITED STATES OF AMERICA, Respondent; INTERSTATE COMMERCE COMMISSION et al., Interveners.

No. 68.

THE TEXAS & PACIFIC RAILWAY CO., Petitioner,
vs.
UNITED STATES OF AMERICA, Respondent; INTERSTATE COMMERCE COMMISSION et al., Interveners.

Said causes came on for final hearing upon the merits and the arguments of counsel were concluded, Mr. H. M. Garwood, Mr. H. A. Scandrett and Mr. Henry G. Herbel appearing on behalf of the petitioners, Mr. Winfred T. Denison on behalf of the United States, Mr. P. J. Farrell on behalf of the Interstate Commerce Commission and Mr. Luther M. Walter on behalf of the Railroad Commission of Louisiana. By oral agreement of counsel in open court made, petitioners were given leave to correct the petition in No. 67 by inserting on page 27, line 3 of section XI, after the figures "$25,000" the words "of which $20,000 will result from the reduction in the commodity rates". Petitioners were also granted leave to correct the amended petition in case No. 68 by inserting on page 26 of said amended petition at the end of the first paragraph of section XI, after the figures "$812,700" the words "most of which will result from the reduction of the commodity rates". Thereupon the causes were taken under advisement by the Court.

230 *Order.*

Entered June 28, 1912.

In the United States Commerce Court, June Session, 1912.

Nos. 67 and 68.

HOUSTON, EAST & WEST TEXAS RAILWAY COMPANY et al. and TEXAS AND PACIFIC RAILWAY COMPANY, Petitioners,
v.
UNITED STATES OF AMERICA et al., Respondents.

Order.

On motion of counsel for the intervening respondent, Railroad Commission of Louisiana, in open court made, the counsel for all of the parties being present and consenting thereto,

It is ordered, That the answers of the United States and the Interstate Commerce Commission to the original petition and the supplemental petition be and the same are hereby made to stand as the answers of the intervening respondent, the Railroad Commission of Louisiana.

By the Court:

MARTIN A. KNAPP,
Presiding Judge.

231 *Opinion.*

Filed April 25, 1913.

United States Commerce Court, June Session, 1912.

No. 68.

THE TEXAS & PACIFIC RAILWAY COMPANY, Petitioner,
v.
UNITED STATES OF AMERICA, Respondent; INTERSTATE COMMERCE Commission, Railroad Commission of Louisiana, and St. Louis Southwestern Railway Company et al., Interveners.

On Final Hearing.

(For opinion of Interstate Commerce Commission, see 23 I. C. C. Rep., 31.)

Mr. Henry G. Herbel, with whom Mr. Fred G. Wright was on the brief, for the petitioner.

Mr. Winfred T. Denison, Assistant Attorney General, with whom

Mr. Thurlow M. Gordon, Special Assistant to the Attorney General, was on the brief, for the United States.

Mr. P. J. Farrell for the Interstate Commerce Commission.

Mr. Luther M. Walter, with whom Mr. R. G. Pleasant, at-
232 torney general of Louisiana, and Mr. W. M. Barrow, assistant attorney general of Louisiana, were on the brief, for the Railroad Commission of Louisiana.

Before Knapp, Presiding Judge, and Hunt, Carland and Mack, Judges.

(April 25, 1913.)

KNAPP, *Presiding Judge:*

The question to be decided in this case has been so thoroughly discussed by the Commission, and kindred questions have been so fully considered in various cases recently decided or now pending in other courts, that little can be profitably said beyond a statement of our conclusions.

There is no dispute about the material facts, and they are easily comprehended. The interstate rates of petitioner from Shreveport, La., to Dallas, Tex., and intermediate points on its line, are very much higher in proportion to distance than the State rates of petitioner from Dallas to the same intermediate points in the State of Texas. For example, the rate on farm wagons from Shreveport to Marshall, a distance of 42 miles, is 56 cents per hundred pounds, while the rate from Dallas to Marshall, a distance of 147 miles, is only 36.8 cents. Under such an adjustment of freight charges it is obvious that Shreveport is severely if not fatally handicapped in its competition with Dallas for the trade of the intervening territory, most of which is situated in the State of Texas. It appears that operating conditions are substantially the same throughout
233 the entire line and in both directions between these two cities, and petitioner makes no claim that the disparity in rates can be justified by differences in the cost of transportation. Indeed, it seems to be conceded—and certainly no other inference is permissible—that the rate situation here in question would clearly constitute undue prejudice to Shreveport and undue preference to Dallas, within the meaning of the third section of the act, provided that section be applicable, if the intrastate rates from Dallas, like the interstate rates from Shreveport, were voluntarily established by the carrier. But while the discrimination in fact against Shreveport is admitted, the contention is made that as matter of law it is not and can not be undue, or otherwise in violation of the act, because the intrastate rates in question are made by authority of the State of Texas and the petitioner is under legal compulsion to observe them. In other words, it is insisted that a violation of the third section can not be predicated upon a rate relation, however unjust, which is brought about, not by the voluntary action of the carrier, but by the command of a State which the carrier is constrained to obey.

In this suit the order of the Commission is sought to be set aside

only so far as it affects commodity rates, and the Commission has found, in effect, that petitioner's interstate commodity rates from Shreveport to these Texas destinations are reasonable rates for the service rendered; that is, rates which conform to the requirements of the first section of the act, and which, therefore, petitioner
234 may justly and lawfully charge. From this finding, in connection with other facts stated, it seems necessarily to follow that the intrastate commodity rates of petitioner from Dallas to the same destinations, which the Texas commission has prescribed, are materially less than petitioner is justly entitled to charge; and this involves the further consequence that the Texas commission, by imposing upon petitioner lower rates than it should rightfully receive, has, in point of fact, placed an undue burden upon interstate commerce, and thereby obstructed the freedom of its movement. If this is a correct analysis of the situation, as is virtually admitted, it can hardly be doubted that the action which produces such a result, whether intended or otherwise, is in derogation of the power and authority of Congress under the commerce clause of the Constitution.

The right of a State to control the movement of its internal commerce and the instrumentalities employed in such movement is not unlimited, as the Supreme Court has repeatedly declared. In the first case which involved the scope and meaning of the commerce clause, Gibbons v. Ogden (9 Wheat., 1), the line of demarkation between State and Federal power was defined by Chief Justice Marshall in the following language:

"It is not intended to say that these words (commerce among the States) comprehend that commerce which is completely internal, which is carried on between man and man in a State or between different parts of the same State, and which does not
235 extend to *or affect* other States. Such a power would be inconvenient, and is certainly unnecessary. Comprehensive as the word 'among' is, it may very properly be restricted to *that commerce which concerns more States than one.* * * * The genius and character of the whole Government seem to be, that its action is to be applied to all the external concerns of the Nation, *and to those internal concerns which affect the States generally;* but not to those which are completely within a particular State, *which do not affect other States,* and with which it is not necessary to interfere for the purpose of executing some of the general powers of the Government." (Italics ours.)

This definition has been uniformly accepted and the language itself quoted with approval in a number of cases. The Daniel Ball (10 Wall., 557, 565); The Lottery Cases (188 U. S., 321, 346); The First Employers' Liability Cases (207 U. S., 463, 493). And quite recently, in The Second Employers' Liability Cases (223 U. S., 1, 54), Mr. Justice Van Devanter, after quoting to the same effect from McCulloch v. Maryland (4 Wheat., 426), remarks that "particularly apposite is the repetition of that principle in Smith v. Alabama" (124 U. S., 465, 473), where it is stated as follows:

"The grant of power to Congress in the Constitution to regulate commerce with foreign nations and among the several States, it is

conceded, is paramount over all legislative powers which, in consequence of not having been granted to Congress, are reserved to the States. It follows that any legislation of a State, although in pursuance of an acknowledged power reserved to it, which con-
236 flicts with the actual exercise of the power of Congress over the subject of commerce, must give way before the supremacy of the national authority."

In the light of these decisions, and many others of similar import, it seems clear to us that Congress is invested with ample power to prevent or remove such a discrimination as is here considered. This is not seriously disputed by petitioner, as we understand the position of counsel, but the contention is pressed that Congress has not exerted its power, even if the power be possessed, to the extent necessary to reach this particular kind of discrimination, and therefore the Commission's order should be set aside because in excess of its authority.

The power which Congress has exercised in this regard finds expression in the third section of the act to regulate commerce, as follows:

"That it shall be unlawful for any common carrier subject to the provisions of this act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever."

It would be difficult to frame a more comprehensive and unqualified declaration. It applies to all interstate railroads and makes unlawful every act which operates to the undue prejudice of any
237 locality. Taken by itself, and giving to the language used its natural significance, the paragraph quoted brings within its condemnation the rate adjustment here involved, because that adjustment as a matter of fact is obviously prejudicial to the shipping interests of Shreveport. And it would follow from this view of the section that the Commission had authority to correct the ascertained injustice by making the order sought to be enjoined. The opposing view is based upon two general grounds which present the real controversy in this case, and which will now be briefly examined.

In the first place, it is said that the provisions of the third section, above quoted, are to be read in connection with the proviso in the first section, and that this proviso defines and limits the power which Congress intended to exercise by expressly excluding transportation "wholly within one State." In other words, the proviso is claimed to be an exception which exempts from regulation under the act the rates on intrastate traffic, and therefore deprives the Commission of authority to found a violation of the statute upon the relation between State and interstate rates, no matter what may be the effect of that relation upon the movement of interstate traffic. The proviso reads as follows:

"Provided, however, that the provisions of this Act shall not apply to the transportation of passengers or property, or to the receiving,

delivering, storage, or handling of property wholly within one State and not shipped to or from a foreign country from or to any State or Territory as aforesaid."

238 The intent and meaning of this proviso has been quite fully discussed by this court in Denver & R. G. R. Co. v. Interstate Com. Com'n (195 Fed., 968), and a conclusion therein reached substantially adverse to the contention here considered. In that case we said:

"Section 1 not only subjects to the act, first, certain carriers, but also, second, certain transportation. The proviso relates, not to the carriers, but to the transportation, and is therefore to be read in connection with the second clause of the section, and not with the first.

* * * * * * *

"Then, out of abundant caution, as it seems, and by way of disclaimer of any authority over a carrier that confined its business to one State, and was not engaged in such interstate business as would bring it within the first clause, the proviso was added.

* * * * * * *

"The proviso, therefore, must be regarded as a disclaimer, and not as an exception. It could not, of course, be an exception to the second grant of jurisdiction over certain transportation, and it does not in any way refer to the first grant of jurisdiction over certain carriers, either by way of disclaimer or by way of exception.

* * * * * * *

"This construction gives consistent and appropriate meaning to those provisions of the first section which define the scope and application of the entire enactment. It sustains the act as a comprehensive scheme of regulation designed to include all interstate transportation wholly by railroad, or partly by railroad and partly by water when both are used under a common arrangement, and to exempt only that intrastate transportation which is not within the power of Congress to regulate."

239 Adhering to the views then expressed, which are summed up in the last paragraph quoted, we hold that this proviso is a mere disclaimer of any intention on the part of Congress, in enacting the act to regulate commerce, to exceed its constitutional power, and that it was not designed to limit or confine the power which Congress could exercise—and, in our opinion, has exercised—in respect of such matters as are here in dispute. If this construction be correct, it follows that the proviso in no way prevents the application of the third section to the facts of this case, and therefore it was within the authority of the Commission to make the order in question.

It is argued in the second place, as above stated, that the "undue preference" and "undue prejudice" which are declared unlawful by the third section of the act, as that section has been construed by the Supreme Court, can be predicated only upon the voluntary action of the carrier, and therefore the lower rates from Dallas than from Shreveport are not in violation of the third section, whatever may

be the resulting disadvantage to Shreveport shippers, because such lower rates are not voluntarily accorded but are imposed upon petitioner against its will by the Texas Commission.

This contention is based upon several decisions of the Supreme Court, particularly East Tenn. &c. Ry. Co. v. Interstate Com. Com'n (181 U. S., 1, and cases there cited), and attention is called
240 to a paragraph in the opinion in that case, page 18, in which the following language is used:

"The prohibition of the third section, when that section is considered in its proper relation, is directed against unjust discrimination or undue preference arising from the voluntary and wrongful act of the carriers complained of as having given undue preference, and does not relate to acts the result of conditions wholly beyond the control of such carriers."

It will be observed that this case arose under the long and short haul clause of the original fourth section of the act and involved the meaning of the phrase "under substantially similar circumstances and conditions," which was eliminated by the amendment of 1910. The real question at issue was whether competition at the longer distance point constituted, or could constitute, a dissimilarity of circumstances and conditions which relieved the road serving the shorter distance point from the obligation imposed by the fourth section, and the Supreme Court answered that question in the affirmative. Examination of the opinion discloses clearly, as we think, that the convincing reason for this conclusion was the fact that the carrier complained of had not caused and was in no way responsible for the discrimination against the shorter distance locality. That discrimination, as was shown, resulted wholly from the lower rates accorded by independent carriers reaching the farther point by other and different routes; and accordingly it was held that the carrier in question, if its rates to the nearer point were rea-
241 sonable, was not violating the act by meeting at a more remote point conditions there existing which it did not create and could not control. Manifestly the factor deemed decisive in that case is wholly absent from the case at bar, and therefore the ruling then made, notwithstanding the statement above quoted from the opinion, can not be accepted as sustaining petitioner's contention. Moreover, the administrative authority of the Commission has been materially increased by the amendments of 1906 and 1910, as the Supreme Court observed in the recent Procter & Gamble case (225 U. S., 282, 297), and it may be open to doubt whether decisions under the former fourth section would be followed in cases arising under the amended statute.

This of course does not meet the argument, based upon the different state of facts here presented, that petitioner is under compulsion as respects the State rates in question and therefore not chargeable with any violation of law because those rates are relatively much lower than its interstate rates from Shreveport. In the last analysis this claim of coercion would seem to beg the question to be decided, since it assumes that petitioner is bound at all events to observe the rates fixed by the Texas commission, although the order sought to be enjoined justifies the application of higher charges. But if the

action of the Texas commission regarding these intrastate rates is in derogation of the regulating power of Congress, the petitioner is not bound by that action, but has the right to readjust its
242 schedules in conformity with the order of the Interstate Commerce Commission.

In the report upon which that order is based the Commission has found, upon convincing proofs therein recited, that the local rates here involved were imposed by the Texas commission for the purpose of favoring the industries and communities of that State. Indeed, the evidence is said "to demonstrate that Texas has a policy of her own with respect to the protection of home industry, which has been made effective by consistent and vigorous action on the part of her commission." And in this policy, as is further found, the petitioner and other carriers in like situation have apparently acquiesced. This plainly means, nor is it seriously disputed, that these Texas rates were prescribed not with reference to their intrinsic reasonableness, or on the basis of just compensation for the service rendered, but with the undisguised intention of giving preference and advantage to the dealers of that State as against their competitors in Louisiana and other States. As Commissioner Lane puts it, "the Texas commission is acting in loco parentis to the jobbing interests of Texas." It also means, as the record indicates, that the rates so established have been accepted by petitioner without more, at most, than a perfunctory protest.

In view of these uncontradicted facts we are constrained to reject the plea of compulsion, not merely or mainly because petitioner has assented to the protective policy of the Texas commission, but
243 because that policy directly affects other States and the flow of commerce from those States, and thereby encroaches upon the field in which Federal authority is exclusive and supreme. To hold otherwise in this case is virtually to admit that the purpose of the Federal act may be thwarted and its operation made ineffective by the laws and administrative effort of the State of Texas. It is evident, as already stated, that these Texas rates were designed and have the necessary result of securing unjust and arbitrary advantage to the shippers for whom they were provided by restricting the movement of commodities from other States and measurably excluding outside dealers from competing for trade in Texas territory. The effect of this action by the Texas commission is not merely incidental and unimportant, but direct, substantial, and to an extent prohibitive. In our judgment it is a positive interference with interstate commerce, which Congress alone has power to regulate, and constitutes a violation of the law which Congress, in the exercise of its power, has duly enacted. The pervading purpose of that law was to prevent carriers subject to its provisions from indulging in unfair and burdensome discriminations against persons and localities engaged in interstate commerce. But if such a patent discrimination as this case discloses can not be reached because it is brought about by a State commission, the law fails in a most important respect to accomplish its wholesome purpose. Moreover, if one State commission may create and perpetuate such a discrimination, other
244 State commissions may take similar action for similar reasons, with results which would greatly impair and indeed

largely defeat the effectiveness of Federal regulation. To say that conditions thus arising do not offend the Federal law and can not be corrected by the Commission appointed to administer that law is to say in effect that State authority is superior to Federal authority when they come in conflict, whereas the reverse proposition has been repeatedly and invariably affirmed by the Supreme Court of the United States.

It is not claimed that the precise question here presented has been passed upon by the Supreme Court, but in various decisions of that court principles have been laid down which seem to us clearly applicable if not controlling.

For example, in the Eubank case (184 U. S., 36), Mr. Justice Peckham uses the following language:

"We fully recognize the rule that the effect of a State constitutional provision or of any State legislation upon interstate commerce must be direct and not merely incidental and unimportant; but it seems to us that where the necessary result of enforcing the provision may be to limit or prohibit the transportation of articles from without the State to a point within it, or from a point within to a point without the state, interstate commerce is thereby affected, and may be thereby to a certain extent directly regulated, and in that event the effect of the provision is direct and important and not a mere incident."

Later, in the Pullman Company case (216 U. S., 65), Mr. Justice (now Chief Justice) White states certain propositions
245 which are said to be "so conclusively established by the previous decisions of this court as to be now beyond dispute." Among them are these:

"A State may not exert its concededly lawful powers in such a manner as to impose a direct burden on interstate commerce.
* * *

"Even though a power exerted by a State, when inherently considered, may not in and of itself abstractly impose a direct burden on interstate commerce, nevertheless such exertion of authority will be a direct burden on such commerce if the power as exercised operates a discrimination against that commerce, or, what is equivalent thereto, discriminates against the right to carry it on."

And more recently, in Southern Ry. Co. v. United States (222 U. S., 23), affirming the validity of the safety appliance acts, Mr. Justice Van Devanter states the principle governing the question there considered, as follows:

"And this is so, not because Congress possesses any power to regulate intrastate commerce as such, but because its power to regulate interstate commerce is plenary and competently may be exerted to secure the safety of the persons and property transported therein and of those who are employed in such transportation, no matter what may be the source of the dangers which threaten it. That is to say, it is no objection to such an exertion of this power that the dangers intended to be avoided arise, in whole or in part, out of matters connected with intrastate commerce."

This court also, in Penn. R. Co. v. Interstate Com. Com'n (193

Fed., 81), following the Illinois Central case (215 U. S.,
246 452), upheld orders of the Commission relating to the distribution of coal cars in times of shortage. And in reply to the argument that the carrier could not comply with the orders in question without violating a statute of the State, we said:

"It may also be true that the enforcement of regulations in conformity with these orders, if applied to cars for intrastate as well as interstate shipments, would result in some conflict with the duties of petitioner under the laws of Pennsylvania, * * * but if this is or proves to be the case, it furnishes no ground for our interference, since Federal authority to the full extent that it may be exerted supersedes and limits State authority."

It is true that the laws and orders involved in these decisions pertain to the physical operation of interstate railroads and not to the relations between State and interstate rates; but in our opinion the underlying question is essentially the same in both classes of cases, and the doctrine of the supremacy of Federal authority should have the same controlling application in the latter as in the former. If State regulation under State laws, respecting such matters as safety appliances, car distribution and the like, must be subordinated to and may be virtually annulled by national regulation under the national laws now in force, there is even greater reason for asserting the sufficiency of the existing acts of Congress, and the authority of the tribunal by which they are administered, to remove such a palpably unjust and injurious discrimination in freight
247 charges as is here presented, although that discrimination is caused by the action of a State commission. This is not to interfere with any power of regulation which a State may rightfully exercise, which does not "affect other States," or materially impede the flow of commerce from one to another, but to give complete and adequate potency to the law which Congress has enacted in pursuance of its plenary and exclusive power to regulate commerce "among the several States." As is said by Sanborn, judge, in Shepard v. Northern Pac. Ry. Co. (184 Fed., 795), after referring to the Eubank case, supra:

"By the same mark, because it is a direct regulation of interstate commerce, the Nation may regulate and prohibit discriminations wrought by an undue difference between interstate and intrastate rates, although such regulation or prohibition may also to some extent affect and regulate intrastate commerce. For to the extent necessary completely and effectually to regulate interstate commerce the Nation by the Congress and its courts may affect and regulate intrastate commerce."

It is the duty of an interstate railroad so to adjust its schedules that all dependent shippers and communities, regardless of imaginary State lines which may divide them, shall be able to use its facilities on relatively equal terms; and the Interstate Commerce Commission, in our judgment, is empowered by the present law to enforce the performance of that duty as occasion may require. The necessity for uniform, comprehensive, and adequate regula-
248 tion, especially urgent in the vital matter of rate regulations, compels assertion of the paramount authority of Congress

and the appropriate exercise of that authority in those provisions of the act which are leveled against unjust discriminations, wherever existing or however caused. Indeed, we see no escape from multiplied difficulties arising under our dual form of government, except by broadly defining the constitutional power of Congress and its exertion as manifested in the enactment of the present law, and by upholding the full application of that law to such controversies as the one here considered. We are therefore in accord with the views of Commissioner Lane, speaking for the majority of the Commission, as expressed in the following extracts from his report:

"An interstate carrier must respect the Federal law, and if it is also subjected to State law it must respect that in so far as it can without doing violence to its obligations under the national authority. Before us are carriers which undeniably discriminate directly against interstate traffic. To this charge they plead that all they have done was to obey the orders of a State commission, as against which they were helpless. They appealed to no court for relief, nor to this Commission. When the State of Louisiana after years of endurance makes complaint to this body these carriers make no showing of the reasonableness of their rates other than that heretofore dealt with—a traffic adjustment equalizing gateways—and even in this defense all the carriers do not join.

* * * * * * *

"While the Texas Commission has evidenced a policy of
249 home protection for its own State cities, there is every evidence that the carriers moving into and within Texas accepted this policy as their own, claiming that not to have adopted it would have led to reprisal on the part of the State authorities. Such conditions may not continue under this act. The interstate carrier which adopts a policy, even under State direction, that makes against the interstate movement of commerce must do so with its eyes open and fully conscious of its responsibilities to the Federal law which guards commerce 'among the States' against discrimination."

The Interstate Commerce Commission investigated the complaint filed with that body on behalf of the shippers and dealers of Shreveport. In its report of that investigation, and upon proofs that seem to permit no other conclusion, the Commission found the fact of unjust discrimination as alleged, and duly made an order requiring its removal. The Commission also found by necessary inference, as its order clearly indicates, that the interstate commodity rates in question were not unreasonable, and this in effect sanctioned the continuance of those rates. It is likewise a necessary inference from the report and order that the unlawful discrimination against Shreveport, so far as commodity rates are concerned, was caused by the imposition of intrastate rates which are lower than petitioner is justly entitled to charge. This being so, it follows that petitioner is at liberty and has the right to comply with the Commission's order by making a proper increase of its Texas rates. Indeed, since its interstate rates are not excessive, such an increase appears to be the only method of compliance which
250 would be just to both shipper and carrier.

When this order was made, upon the facts so ascertained

and reported, it had the effect, in our judgment, of relieving petitioner from further obligation to observe the intrastate rates which the Texas authorities had prescribed. The petitioner was no longer under compulsion in respect to those rates, because the rate situation disclosed by the inquiry was subject in its entirety to the provisions of the Federal statute and the administrative control of the Commission. The order of the Commission therefore operated to release petitioner, as regards the intrastate rates in question, from the restraint imposed by the State of Texas; and thereupon petitioner became entitled, if it did not choose to reduce its interstate rates, to comply with the order by advancing its Texas rates sufficiently to remove the forbidden discrimination. Its obedience was due to the superior authority, and it ceased to be bound by any inconsistent obligations. Whether petitioner should have applied to the courts for relief in the premises, basing its application upon the Commission's order and the rights of petitioner thereunder, or could advance its Texas rates in the first instance, relying upon the order as a defense against any prosecution under Texas laws, is not for us to determine. It is sufficient to hold, as we do, that petitioner can not resist the order on the ground of involuntary action, because the effect of that order was an exemption of these intrastate rates from Texas authority.

251 As was suggested at the outset, the general question here involved has been presented in numerous cases, more or less closely allied, and is perhaps the most conspicuous and important subject of current litigation. In the course of that litigation every decision of possible bearing has been repeatedly cited and every opinion critically examined, whilst the ablest lawyers in briefs and at the bar have exhausted the resources of argument. We can add nothing to what has been so often said, and deem it unnecessary to extend the discussion. In our judgment the order in question was within the authority of the Commission and ought not to be set aside.

The petition will therefore be dismissed.

MACK, *Judge*, concurring:

I agree that an intrastate rate voluntarily established by the railroads may be the basis for an order of the Interstate Commerce Commission declaring such a rate to involve an undue prejudice as against an interstate rate and requiring that the two rates be equalized.

I fully agree also that Congress has the constitutional power and may by proper legislation grant to the Interstate Commerce Commission authority to prevent undue prejudice in interstate commerce resulting from a rate not in the true sense voluntary, and irrespective of whether it be interstate or intrastate.

In view, however, of the passage cited from E. Ry. Co vs. Interstate Commerce Commission, 181 U. S. 1, and of the decision
252 of this Court in Atchison, T. & S. F. Ry. Co. v. U. S., 191 Fed. 856, now pending on appeal in the Supreme Court, I am of the opinion that the Interstate Commerce Commission under the

legislation now in force cannot base such an order upon a compelled rate, whether interstate or intrastate, and whether compelled by competition, by statute, by court decree or by the order of a commission.

In my judgment, the Texas state rates cannot be treated by the Interstate Commerce Commission as if they were absolutely null and void, even though upon direct attack in the State or Federal Courts they would be nullified and their enforcement permanently enjoined as infringing upon the exclusive power of the Federal government to regulate interstate commerce. In the absence of a judicial decree, temporarily or permanently suspending the force and effect of the Texas rates, the railroads would be compelled to obey them, just as the railroads and the public are required to observe interstate rates duly made and published by the railroads, even though they be such as would be set aside for unreasonableness, unjust discrimination, or undue prejudice on direct attack before the Interstate Commerce Commission.

The order of the Interstate Commerce Commission therefore give only an apparent but not a real alternative, either to raise the Texas rates or to lower the interstate rates; in effect it compels the reduction of the interstate rates to a point far below what the com-
253 mission itself considers a reasonable rate, at least until a court of competent jurisdiction shall have enjoined the enforcement of the Texas rates.

If the Texas rates here in question must necessarily be held to be involuntary and compelled, I should be of the opinion that the order of the Interstate Commerce Commission must be set aside.

Inasmuch however as there seems to be some basis, though slight, for the view that the failure of the railroads to attack the Texas rates was due to their voluntary or negligent acquiescence therein, and that therefore these rates may be said to have been not compelled but voluntary in the sense of having been voluntarily assented to instead of having been actively attacked, and inasmuch as the conclusions of my brethren are based in part at least upon this view, I concur for this reason only in upholding the Commission's order.

254 *Final Decree.*

Entered April 29, 1913.

In the United States Commerce Court, June Session, 1912.

No. 68.

THE TEXAS AND PACIFIC RAILWAY COMPANY, Petitioner,

v.

UNITED STATES OF AMERICA, Respondent; INTERSTATE COMMERCE Commission, Railroad Commission of Louisiana, and St. Louis Southwestern Railway Company et al., Interveners.

Final Decree.

This cause came on for final hearing at this session and was argued by counsel; and thereupon, upon consideration thereof, it was

ordered, adjudged and decreed that the petition be, and the same is hereby, dismissed at the cost of the petitioner.

By the Court:

MARTIN A. KNAPP,
Presiding Judge.

255 *Petition for Appeal.*

Filed May 12, 1913.

In the United States Commerce Court.

No. 68.

THE TEXAS & PACIFIC RAILWAY COMPANY, Petitioner,
vs.
UNITED STATES OF AMERICA, Respondent; INTERSTATE COMMERCE Commission, Intervening Respondent; J. J. Meredith, Shelby Taylor, and Henry B. Schreiber, Constituting the Railroad Commission of Louisiana; Missouri, Kansas & Texas Railway Company of Texas, St. Louis, Southwestern Railway Company, and St. Louis, Southwestern Railway Company of Texas, Intervening Petitioners.

Petition for Allowance of Appeal.

Now comes The Texas & Pacific Railway Company, Petitioner in the above entitled and numbered cause, and St. Louis, Southwestern Railway Company, St. Louis, Southwestern Railway Company of Texas, and Missouri, Kansas & Texas Railway Company of Texas, intervening petitioners, and, feeling aggrieved by the order and final decree of the Court entered herein on the 29th day of April, 1913, does hereby appeal from said order and decree to the Supreme Court of the United States, for the reasons specified in the asisgnments of error filed herewith, and prays that this appeal may be allowed and that a transcript of the record, proceedings and papers upon which said order was made, duly authenticated, may be sent to the Supreme Court of the United States.

THE TEXAS & PACIFIC RAILWAY COMPANY,
By HENRY G. HERBEL,
FRED G. WRIGHT,
Attorneys.

256 MISSOURI, KANSAS & TEXAS RAILWAY COMPANY OF TEXAS,
By JOSEPH M. BRYSON,
ALEX S. COKE,
Attorneys.

ST. LOUIS, SOUTHWESTERN RAILWAY COMPANY,
ST. LOUIS, SOUTHWESTERN RAILWAY COMPANY OF TEXAS,
By S. H. WEST,
EDW. A. HAID,
Attorneys.

257 *Assignments of Error.*

Filed May 12, 1913.

In the United States Commerce Court.

No. 68.

THE TEXAS & PACIFIC RAILWAY COMPANY, Petitioner,

vs.

UNITED STATES OF AMERICA, Respondent; INTERSTATE COMMERCE Commission, Intervening Respondent; J. J. Meredith, Shelby Taylor, Henry B. Schreiber, Constituting the Railroad Commission of Louisiana; Missouri, Kansas & Texas Railway Company of Texas, St. Louis Southwestern Railway Company, and St. Louis Southwestern Railway Company of Texas, Intervening Petitioners.

Assignments of Error.

Comes now petitioner and intervening petitioners in the above entitled cause and makes the following assignments of error to the Order and Decree of the Court, to-wit:

258 **First.**

The Court erred in dismissing the petition of The Texas & Pacific Railway Company, petitioner herein, and the petitions of Missouri, Kansas & Texas Railway Company of Texas, St. Louis Southwestern Railway Company, and St. Louis Southwestern Railway Company of Texas, intervening petitioners herein, and rendering final decree herein, sustaining and holding valid the order of the Interstate Commerce Commission in Cause No. 3918, J. J. Meredith, Shelby Taylor and Henry B. Schreiber, constituting the Railroad Commission of Louisiana, vs. St. Louis, Southwestern Railway Company, et al., of date March 11, 1912, for that:

Said order of the Interstate Commerce Commission was and is wholly invalid and void in that the Interstate Commerce Commission having therein held that the interstate commodity rates from Shreveport, Louisiana, to the several Texas points in said order mentioned, were in all things reasonable, the said Interstate Commerce Commission was without power, authority or jurisdiction to order petitioner, The Texas & Pacific Railway Company, to equalize rates imposed by the Railroad Commission of Texas between points wholly within the State of Texas, so as to conform said intrastate rates so made by and under the authority of the Railroad Commission of Texas to the said interstate rates applicable from Shreveport, Louisiana, to said points in Texas, mentioned, and said Interstate Commerce Commission is without power, authority or jurisdiction to compel petitioner to reduce reasonable interstate rates to equalize same with lower intrastate rates installed by petitioner under the compulsion of the order of the Railroad Commission of Texas.

259 Second.

The Court erred in dismissing said petition and sustaining said Order of the Interstate Commerce Commission, for that:

The Interstate Commerce Commission is wholly without power, authority or jurisdiction under the Interstate Commerce Act, approved February 4, 1887, and Acts amendatory thereof, to make any valid order controlling, or seeking to control, rates wholly within the State of Texas by the Railroad Commission of Texas under and by virtue of valid laws of the State of Texas, duly authorizing it thereto.

Third.

The Court erred in dismissing said petition and sustaining the said order of the Interstate Commerce Commission, for that:

The Congress of the United States is wholly without power to enact any valid law controlling, or seeking to control, purely intrastate rates applicable to commerce moving wholly between points situated within the limits of the State of Texas and made by the Railroad Commission of Texas in pursuance of authority duly and legally conferred by the Constitution and laws of that State.

Fourth.

The Court erred in dismissing said petition and entering its final decree herein, sustaining the order of the Interstate Commerce Commission therein complained of, for that:

The uncontradicted evidence herein shows that the commodity rates complained of from Dallas towards Shreveport and from Houston towards Shreveport, applied wholly to points within the State of Texas; that said rates were duly ordered and installed by the Railroad Commission of Texas, which had full power to make and install the same under the Constitution and laws of the

260 State of Texas; that petitioner and intervening petitioners, appellants herein, were forced under the compulsion of severe penalties, to apply the same, and petitioner and intervening petitioners are and were wholly without right, power or authority under said laws of the State of Texas, to apply between said points any other or different rates than the rates so prescribed by the Railroad Commission of Texas and the Interstate Commerce Commission having held in the order complained of that the commodity rates herein involved from Shreveport in the State of Louisiana, to said points in the State of Texas, were in and of themselves reasonable, petitioner and intervening petitioners, appellants herein, were and are wholly without power or authority to make or apply between said points in the State of Texas, any other or different rates than those prescribed by the Railroad Commission of Texas and the Interstate Commerce Commission was and is wholly without power, authority or jurisdiction to compel petitioner and intervening petitioners, appellants herein, to install or apply between said points wholly within the State of Texas, any other or different rates than those prescribed by the Railroad Commission of Texas.

Fifth.

The Court erred in dismissing the petition of The Texas & Pacific Railway Company and the petitions of the intervening petitioners herein and in sustaining the order of the Interstate Commerce Commission herein complained of, for that:

The Interstate Commerce Commission had no power or authority or jurisdiction to make any order on the petitioner or intervening petitioners herein requiring or compelling them to remove the discrimination found to exist by said Interstate Commerce Commission, said discrimination (if it be a discrimination) not being an undue or illegal discrimination, of which the Interstate Commerce Commission has, under Section 3 of the Act to Regulate Commerce or any other valid law of the United States, power, authority or jurisdiction to remove.

261

Wherefore, petitioner prays that said decree be reversed and that said United States Commerce Court be directed to enter a decree in accordance with prayers of your petitioner herein, cancelling said order of the Interstate Commerce Commission and permanently enjoining the enforcement thereof.

THE TEXAS & PACIFIC RAILWAY COMPANY,
By HENRY G. HERBEL,
FRED G. WRIGHT,
Attorneys.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY OF TEXAS,
By JOSEPH M. BRYSON,
ALEX S. COKE,
Attorneys.

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY,
ST. LOUIS SOUTHWESTERN RAILWAY COMPANY OF TEXAS,
By S. H. WEST,
EDW. A. HAID,
Attorneys.

262 *Order Allowing Appeal.*

Entered May 12, 1913.

In the United States Commerce Court.

THE TEXAS AND PACIFIC RAILWAY COMPANY, Petitioner,
vs.
UNITED STATES OF AMERICA, Respondent; INTERSTATE COMMERCE COMMISSION, Intervening Respondent; J. J. Meredith, Shelby Taylor, and Henry B. Schreiber, Constituting the Railroad Commission of Louisiana; Missouri, Kansas & Texas Railway Company of Texas, St. Louis Southwestern Railway Company, and St. Louis Southwestern Railway Company of Texas, Intervening Petitioners.

Order Allowing Appeal.

(Entered May 12, 1913.)

Prayer of the petitioner for an allowance of appeal in the above entitled cause coming on to be heard, an appeal is hereby allowed to the Supreme Court of the United States to review the order and the final decree, dismissing petitioner's complaint hereinbefore entered in this cause, and the cost bond is hereby fixed at One Thousand Dollars ($1,000.00.)

Dated this 12th day of May, A. D. 1913.

MARTIN A. KNAPP,
Presiding Judge.

263 Bond on Appeal.

Filed May 12, 1913.

No. 68.

THE TEXAS & PACIFIC RAILWAY COMPANY, Petitioner,
vs.
UNITED STATES OF AMERICA, Respondent; INTERSTATE COMMERCE COMMISSION, Intervening Respondent; J. J. Meredith, Shelby Taylor, and Henry B. Schreiber, Constituting the Railroad Commission of Louisiana; Missouri, Kansas & Texas Railway Company of Texas, St. Louis Southwestern Railway Company, and St. Louis Southwestern Railway Company of Texas, Intervening Petitioners.

Know all men by these presents, That we, the Texas & Pacific Railway Company, Missouri, Kansas & Texas Railway Company of

Texas, St. Louis, Southwestern Railway Company, and St. Louis, Southwestern Railway Company of Texas, as principals, and the Massachusetts Bonding and Insurance Company, a Corporation of the State of Massachusetts, as surety, are held and firmly bound unto the United States of America, the Interstate Commerce Commission, and to J. J. Meredith, Shelby Taylor, and Henry B. Schreiber, constituting the Railroad Commission of Louisiana, in the sum of one thousand dollars ($1,000.00) to be paid to the United States of America, the Interstate Commerce Commission, J. J. Meredith, Shelby Taylor and Henry B. Schreiber, constituting the Railroad Commission of Louisiana. We bind ourselves and each of our successors and assigns jointly and severally, firmly by these presents.

Sealed with our seals and dated this 9th day of May, A. D. 1913.

Whereas, heretofore to-wit: on the 29th day of April,
264 1913, in a suit pending in the United States Commerce Court and numbered No. 68 on the docket of said Court, wherein the Texas & Pacific Railway Company was petitioner and United States of America was respondent, and the Interstate Commerce Commission was intervening respondent, and the Missouri, Kansas & Texas Railway Company of Texas, St. Louis & Southwestern Railway Company, and St. Louis, Southwestern Railway Company of Texas, were intervening petitioners, an order, judgment and decree was rendered against said The Texas & Pacific Railway Company, Missouri, Kansas & Texas Railway Company of Texas, St. Louis, Southwestern Railway Company, and St. Louis, Southwestern Railway Company of Texas, dismissing the petition of said The Texas & Pacific Railway Company, and taxing the costs of said suit against said The Texas & Pacific Railway Company, petitioner, and

Whereas said The Texas & Pacific Railway Company, Missouri, Kansas & Texas Railway Company, St. Louis, Southwestern Railway Company, and St. Louis, Southwestern Railway Company of Texas, have appealed from said order and decree to the Supreme Court of the United States and have obtained citation directed to said United States of America, said Interstate Commerce Commission, said J. J. Meredith, Shelby Taylor and Henry B. Schreiber, constituting the Railroad Commission of Louisiana, citing and admonishing them and each of them to be and appear at a session of the Supreme Court of the United States to be held at the City of Washington within thirty days from the allowance of said appeal;

Now the condition of the above obligation is such that, if the said The Texas & Pacific Railway Company, Missouri, Kansas & Texas Railway Company of Texas, St. Louis, Southwestern Railway Company, and St. Louis, Southwestern Railway Company of Texas, shall prosecute their said appeal to effect and shall pay all costs if they shall fail to make their said plea good, then the above

265 obligation to be void; otherwise, to remain in full force and effect.

THE TEXAS & PACIFIC RAILWAY COMPANY,
By HENRY G. HERBEL,
FRED G. WRIGHT,
Attorneys.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY OF TEXAS,
By JOSEPH M. BRYSON,
ALEX S. COKE,
Attorneys

ST. LOUIS, SOUTHWESTERN RAILWAY COMPANY,
ST. LOUIS, SOUTHWESTERN RAILWAY COMPANY OF TEXAS,
By S. H. WEST,
EDW. A. HAID,
Attorneys.

MASSACHUSETTS BONDING AND INSURANCE COMPANY,
By LEE B. MOSHER,
Attorney in Fact.

[Seal of Massachusetts Bonding & Insurance Company.]

The above and foregoing bond approved and ordered filed this 12th day of May, A. D. 1913.

MARTIN A. KNAPP,
Presiding Judge.

266 In the United States Commerce Court.

No. 68.

THE TEXAS & PACIFIC RAILWAY COMPANY, Petitioner,
vs.
UNITED STATES OF AMERICA, Respondent; INTERSTATE COMMERCE Commission; J. J. Meredith, Shelby Taylor, and Henry B. Schreiber, Constituting the Railroad Commission of Louisiana; Missouri, Kansas & Texas Railway Company of Texas, St. Louis Southwestern Railway Company, and St. Louis Southwestern Railway Company of Texas.

Præcipe for Record.

(Filed May 12, 1913.)

To the Clerk of the United States Commerce Court:

You will please prepare a transcript of the record in the above entitled cause to be filed in the office of the Clerk of the Supreme

Court of the United States upon the appeals from the final order and decree of the Commerce Court entered April 29, 1913, and include in said transcript the following pleadings, proceedings and papers on file or of record, to wit:

1. Petition and amended petition, with exhibits, of The Texas & Pacific Railway Company.
2. Intervening petition of St. Louis Southwestern Railway Company and St. Louis Southwestern Railway Company of Texas.
3. Intervening petition of Railroad Commission of Louisiana.
4. Orders of Commerce Court permitting interventions.
5. Answer of Interstate Commerce Commission to petition of The Texas & Pacific Railway Company.
6. Answer of Interstate Commerce Commission to intervening petition of St. Louis Southwestern Railway Company and St. Louis Southwestern Railway Company of Texas.

267 7. Answer of United States to petition of The Texas and Pacific Railway Company.

8. Order of Commerce Court allowing answers of Interstate Commerce Commission and United States to petitions of original petitioner and intervening petitioners to stand as answers of Railroad Commission of Louisiana.
9. Final decree of United States Commerce Court.
10. Opinion of United States Commerce Court.
11. Petition for appeal and allowance of appeal; assignments of error; bond for appeal, and order approving same; citation on appeal to United States, Interstate Commerce Commission and Railroad Commission of Louisiana.

HENRY G. HERBEL,
Attorney for Appellants.

268 United States Commerce Court.

No. 68.

THE TEXAS & PACIFIC RAILWAY COMPANY, Petitioner,
vs.
UNITED STATES OF AMERICA, Respondent; INTERSTATE COMMERCE Commission; Railroad Commission of Louisiana; Missouri, Kansas & Texas Railway Company of Texas, St. Louis Southwestern Railway Company, and St. Louis Southwestern Railway Company of Texas, Interveners.

UNITED STATES OF AMERICA, *ss:*

I, G. F. Snyder, Clerk of the United States Commerce Court, do hereby certify the above and foregoing (on pages numbered 1 to 267 inclusive) to be a true and complete transcript of the proceedings had and papers filed in the above entitled cause, made in accordance with the præcipe filed in the office of the Clerk of said Court on the 12th day of May, A. D. 1913, as the same appear from the original record in the Clerk's Office of said Court.

In testimony whereof I have hereunto set my hand and affixed the seal of the United States Commerce Court this 19th day of May, A. D. 1913.

[Seal of the United States Commerce Court.]

G. F. SNYDER, *Clerk.*

269 *Citation on Appeal.*

Filed United States Commerce Court. May 12, 1913. G. F. Snyder, Clerk.

UNITED STATES OF AMERICA, *ss:*

To United States of America, Interstate Commerce Commission; J. J. Meredith, Shelby Taylor, and Henry B. Schreiber, Constituting the Railroad Commission of Louisiana:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to an appeal duly allowed and filed in the Clerk's Office of the United States Commerce Court, wherein The Texas & Pacific Railway Company, Missouri, Kansas & Texas Railway Company of Texas, St. Louis Southwestern Railway Company, and St. Louis Southwestern Railway Company of Texas are appellants and you are appellees, to show cause, if any there be, why the final order or decree rendered against the said appellants as in said appeal mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

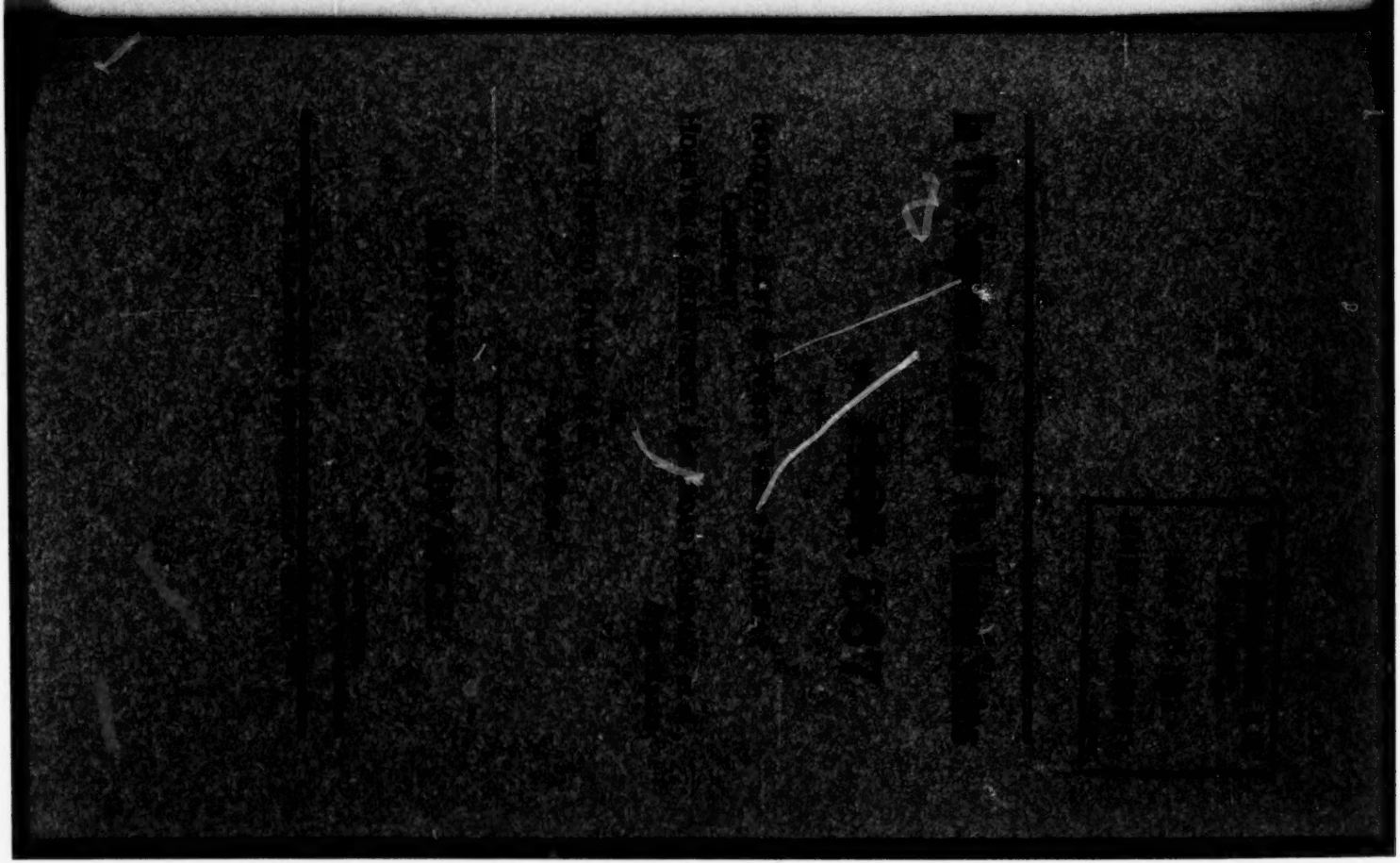
Witness the Honorable Martin A. Knapp, Presiding Judge of the United States Commerce Court this 12th day of May, 1913.

MARTIN A. KNAPP,
Presiding Judge, United States Commerce Court.

Service of a copy of the within citation is hereby admitted this 12th day of May, 1913.

BLACKBURN ESTERLINE,
Special Assistant to the Attorney General, for the United States.
P. J. FARRELL, *For Int. Com. Com.*
L. M. WALTER,
For R. R. Com. of Louisiana.

270 Endorsed on cover: File No. 23,713. U. S. Commerce Court. Term No. 568. The Texas & Pacific Railway Company et al., appellants, vs. The United States, The Interstate Commerce Commission et al. Filed May 22d, 1913. File No. 23,713.



In The Supreme Court of The United States

No._____

HOUSTON, EAST & WEST TEXAS RAILWAY COMPANY,

HOUSTON & SHREVEPORT RAILROAD COMPANY, et al.,
Appellants,

vs.

THE UNITED STATES, et al.,
Appellees.

MOTION TO ADVANCE

To the Honorable, the Supreme Court of the United States:

Herein comes appellants, Houston East & West Texas Railway Company, Houston & Shreveport Railroad Company, Missouri, Kansas & Texas Railway Company of Texas, St. Louis Southwestern Railway Company, and St. Louis Southwestern Railway Company of Texas, appellants herein, and move the court that this cause be advanced and set down for hearing herein at such early date as may to the court seem proper and for cause say,

1. That this cause is of large public interest, in that

it involves the right and power of the Interstate Commerce Commission to directly control freight rates purely intrastate made and installed by the Railroad Commission of Texas which has power under the constitution and laws of that state to initiate, install and enforce freight rates upon all commodities moving in intrastate commerce between points wholly within the state.

2. That on or about the 8th day of March, 1911, the Railroad Commission of Louisiana filed its complaint with the Interstate Commerce Commission against your petitioners, appellants herein, and other railway carriers engaged in state and interstate commerce complaining that, among other things, the City of Shreveport was discriminated against by said carriers, in that the rates on all classes and commodities of freight from Shreveport, La., to certain points within the State of Texas described in said complaint, were unreasonable in and of themselves and that they were discriminatory, in violation of the third section of the Act to Regulate Commerce, in that the rates on said classes and commodities of freight from the cities of Dallas and Houston within the State of Texas to points also within said state were lower for equal distances than rates over the lines of said carriers from Shreveport to points within the State of Texas; that due notice having been had, appellants, respondents in said proceedings, answered denying that the rates complained of were unreasonable in themselves and averring that the rates from Dallas and Houston to points within the State of Texas in the direction of Shreveport were in fact lower than the rates on like

classes and commodities for equal distances from Shreveport into Texas; that nevertheless, the said rates applicable from said cities of Houston and Dallas to points wholly within the State of Texas were not voluntarily installed by respondents and appellants herein, but were installed by the Railroad Commission of Texas which under the constitution and laws of that state has the sole authority to initiate and install rates, and that appellants herein and respondents in said proceeding were forced under the compulsion of severe penalties to comply with the orders of the Railroad Commission of said state and to install and apply the rates complained of; that said rates being thus compelled by the action of the Railroad Commission of Texas were not voluntary rates and could not therefore be held to be discriminative under the provisions of Section 3 of the Act to Regulate Commerce; that thereafter evidence having been duly adduced and full hearing and argument had thereon, the Interstate Commerce Commission on the 11th day of March, 1912, by order and opinion of date March 11, 1912, for which opinion see 23 I. C. C. R. p. 31, held: First, that the class rates from Shreveport to the several points in said opinion and order mentioned were unreasonable per se and ordered respondents and appellants herein to reduce said class rates to the amounts indicated in said opinion; second, that while the commodity rates complained of were not unreasonable per se, that they were unduly discriminative under the third section of the Act to Regulate Commerce, in that the purely intrastate commodity rates from Dallas and Houston in the

direction of Shreveport were upon the same commodities and for equal distances lower than the interstate rates from Shreveport in the direction of said two cities and appellants, Houston East & West Texas Railway Company, Houston & Shreveport Railroad Company and the Texas & Pacific Railway Company were ordered to install commodity rates from Shreveport to the several points in Texas mentioned that were not in excess of the intrastate rates from Dallas and Houston in the direction of Shreveport for equal distances; that said opinion and order was rendered and made by a divided Commission, four members of said body being in favor thereof and three filing opinions dissenting therefrom; that said order by its terms became effective May 15, 1912; that thereafter and within the time allowed by law, appellants, Houston East & West Texas Railway Company and Houston & Shreveport Railroad Company filed their petition in the Commerce Court of the United States seeking to cancel and annul said order and to permanently enjoin the enforcement thereof; that thereafter the Missouri, Kansas & Texas Railway Company of Texas, the St. Louis Southwestern Railway Company and the St. Louis Southwestern Railway Company of Texas, upon due order of court permitting the same, intervened in said cause alleging that while said order did not run against them that by reason of competitive conditions, it directly affected their rights and revenues and thereafter the Railroad Commission of Louisiana and the Interstate Commerce Commission intervened in said cause seeking to support said order; that the

Interstate Commerce Commission having held upon the facts that the class rates in its said order mentioned were unreasonable per se, petitioners and intervening petitioners, appellants herein, abandoned in said cause any attack upon that portion of said order applicable to said class rates, presenting to the United States Commerce Court for determination the sole issue as to whether the Interstate Commerce Commission having found that the commodity rates complained of were not unreasonable per se, purely intrastate rates forced upon appellants herein by the orders of the Railroad Commission of Texas and not voluntarily installed by appellants, petitioners in said court, were unduly and illegally discriminative under the third section of the Act to Regulate Commerce, and whether the Interstate Commerce Commision had authority or jurisdiction under the Act to Regulate Commerce to compel the removal of said discrimination; that the order of the Interstate Commerce Commission as to said class rates became effective upon May 15, 1912, but that portion of said order relative to the commodity rates and here involved was suspended from time to time until the rendition of the opinion of the United States Commerce Court should be rendered herein, the last effective date of said order being May 15, 1913; that heretofore to-wit: On the 29th day of April 1913, the said United States Commerce Court made and entered its decree, after full hearing and argument thereon, dismissing the bill of petitioners and in all things sustaining the order of the Interstate Commerce Commission complained of and petitioners

in said court, appellants herein, having duly prayed for same obtained an appeal from said decree of the United States Commerce Court to this Honorable Court and said appeal having been duly perfected, the record of said cause has been duly filed herein, said cause docketed and appearances entered, the same stands in this court for final submission; that after the rendition of said decree of the United States Commerce Court herein appealed from, and prior to the effective date of that portion of the order of the Interstate Commerce Commission herein sought to be canceled and enjoined, the Interstate Commerce Commission by order of date May 14, 1913, further suspended the effective date thereof with the understanding and agreement upon the part of petitioners that application to advance the hearing of this appeal should be made and final determination hereof had with such expedition as to this Honorable Court may seem proper.

3. Petitioners aver that this cause involves the determination of issues of grave public import, in this, that it involves the right of the duly constituted authorities of the sovereign State of Texas to make, install and compel obedience, upon the part of carriers engaged both in state and interstate commerce, to freight rates upon commodities moving between points wholly within the State of Texas and constituting purely intrastate commerce and it involves the right of the Interstate Commerce Commission, assuming to act under provisions of Section 3 of the Act to Regulate Commerce, to regu-

late purely intrastate rates made by a state rate-making body duly authorized thereunto by the constitution and laws of the state, and to compel carriers engaged in both state and interstate commerce to equalize reasonable interstate rates with rates purely intrastate not voluntarily installed by said carriers, but installed and enforced by the state rate-making authority, obedience to which is compelled by severe penalties accruing both to individuals and to the state in case of any departure upon the part of the carrier from said rates.

4. Petitioners aver that the demand of the Railroad Commission of Louisiana, as stated by the majority opinion of the Interstate Commerce Commission was that the Interstate Commerce Commission establish the same basis of rates of transportation between Shreveport and East Texas points as are accorded to Texas competitors of Shreveport interests in the same line of business for the same distances, and that the majority of said Interstate Commerce Commission, by its order sustained by a decree of the United States Commerce Court herein appealed from, sustains the right of the Interstate Commerce Commission to measure a reasonable interstate rate by rates purely intrastate, and distinctly and clearly sustains the power of said Interstate Commerce Commission to control and set aside rates purely intrastate made by the Railroad Commission of Texas with full authority thereto under the constitution and laws of said state, and orders appellants herein at the peril of the infliction of severe penalties accruing to both the State of Texas and

to individual shippers, to disregard the purely intrastate so made by the Railroad Commission of Texas and conform the same to rates ordered and approved by the Interstate Commerce Commission; that as shown by the dissenting opinions of Commissioners Harlan, Clements and McChord, said order of the Interstate Commerce Commission is in direct conflict with the prior orders and decisions of the Interstate Commerce Commission and as will be shown upon hearing hereof by your petitioners is in conflict with the weight of judicial authority.

5. Petitioners further aver that by reason of the great extent of the coast line of the State of Texas, its numerous ports of entry and its peculiar situation relative to interstate traffic, a great portion of the rates made by the Railroad Commission of Texas have a direct and immediate effect upon interstate and foreign commerce; and that inasmuch as carriers engaged in both state and interstate commerce are not allowed under the laws of the State of Texas to depart in any particular from the intrastate rates made by said Railroad Commission of Texas, it is a matter of grave and immediate importance that the relative authorities and jurisdictions of the Interstate Commerce Commission and the Railroad Commission of Texas involved in this cause be speedily determined.

6. Petitioners would further state that if, in order to comply with the order of the Interstate Commerce Commission herein involved, they should undertake to equalize their intrastate rates condemned by said order

and thus depart from the scale of rates installed by the Railroad Commission of Texas that they and each of them would be exposed to prosecutions at the hand of the State of Texas for severe and confiscatory penalties and by suits for severe penalties by each individual shipper, each shipment constituting under the laws of said state a separate offense.

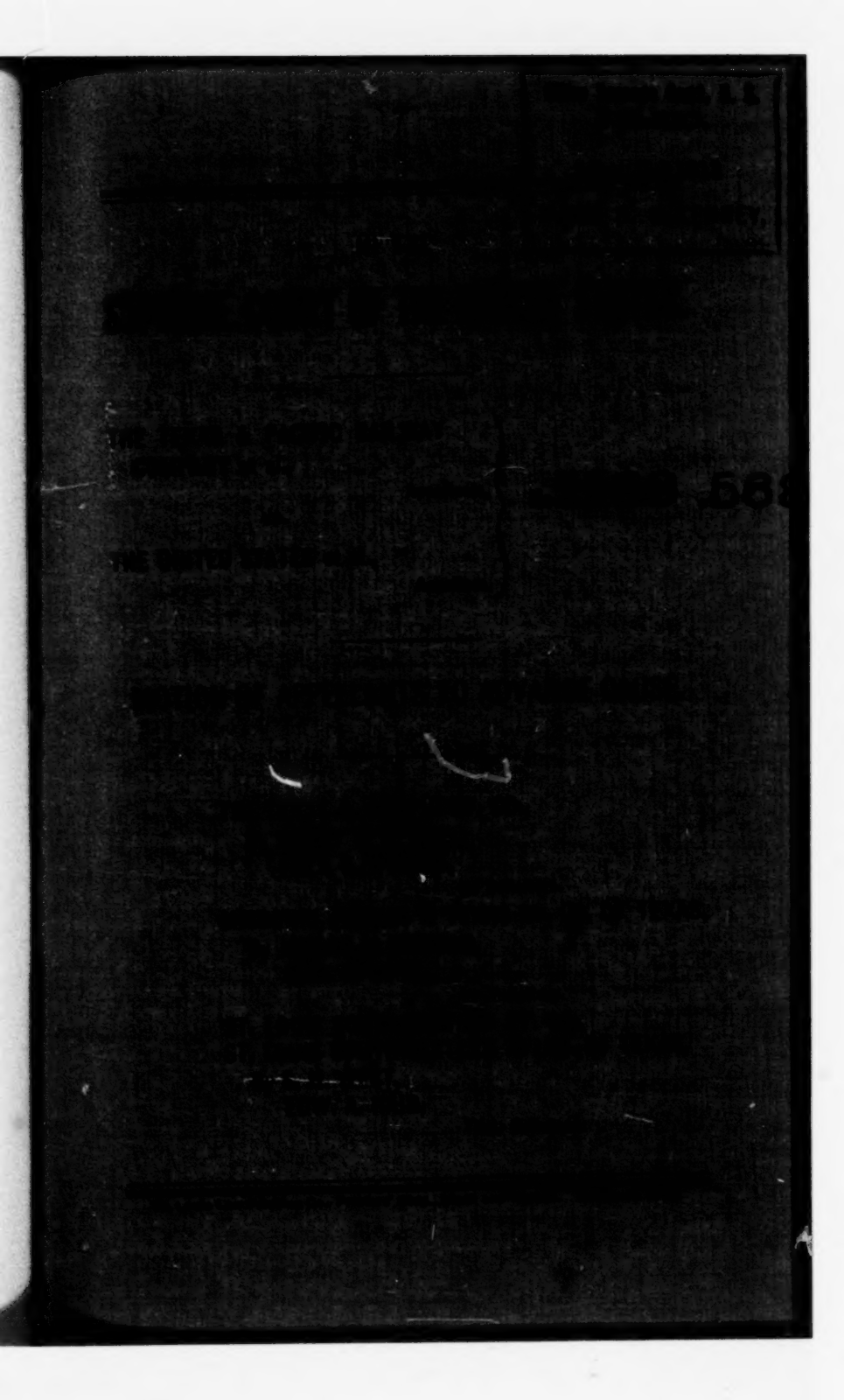
Wherefore petitioners move that this cause be advanced and set down for hearing at such early day as may to this Honorable Court seem proper.

Respectfully submitted,

HOUSTON EAST & WEST TEXAS RAILWAY COMPANY,
HOUSTON & SHREVEPORT RAILROAD COMPANY,
MISSOURI, KANSAS & TEXAS RAILWAY COMPANY OF TEXAS,
ST. LOUIS SOUTHWESTERN RAILWAY COMPANY,
ST. LOUIS SOUTHWESTERN RAILWAY COMPANY OF TEXAS.

By

Solicitor.



IN THE

SUPREME COURT OF THE UNITED STATES.

THE TEXAS & PACIFIC RAILWAY COMPANY et al.,
Appellants,
vs.
THE UNITED STATES et al.,
Appellees.
No. _____.

MOTION OF APPELLANTS TO ADVANCE CAUSE.

To the Honorable, the Supreme Court of the United States:

Herein come appellants, The Texas & Pacific Railway Company, Missouri, Kansas & Texas Railway Company of Texas, St. Louis Southwestern Railway Company and St. Louis Southern Railway Company of Texas, appellants herein, and move the Court to advance this cause and set it down for hearing at such early date as may to the Court seem proper, and for cause say:

1. That this cause is of large public interest, in that it involves the right and power of the Interstate Commerce Commission to directly control freight rates

purely intrastate, made and installed by the Railroad Commission of Texas, which has power under the Constitution and laws of that State to initiate, install and enforce freight rates upon all commodities moving in intrastate commerce between points wholly within the State.

2. That on or about the 8th day of March, 1911, the Railroad Commission of Louisiana filed its complaint with the Interstate Commerce Commission against your petitioners, appellants herein, and other railway carriers engaged in state and interstate commerce, complaining that, among other things, the City of Shreveport was discriminated against by said carriers, in that the rates on all classes and commodities of freight from Shreveport, La., to certain points within the State of Texas described in said complaint, were unreasonable in and of themselves and that they were discriminatory, in violation of the third section of the Act to Regulate Commerce, in that the rates on said classes and commodities of freight from the cities of Dallas and Houston, within the State of Texas, to points also within said state were lower for equal distances than rates over the lines of said carriers from Sheveport to points within the State of Texas; that due notice having been had, appellants (respondents in said proceeding), answered, denying that the rates complained of were unreasonable in themselves and averring that the rates from Dallas and Houston to points within the State of Texas in the direction of Shreveport were, in fact, lower than the rates on like classes and commodities for equal distances from Shreveport into Texas; that, nevertheless, the said rates applicable from said cities of Houston and Dallas to points wholly within the State of Texas were not

voluntarily installed by respondents and appellants herein, but were installed by the Railroad Commission of Texas, which, under the Constitution and laws of that state, has the sole authority to initiate and install rates, and that appellants herein and respondents in said proceeding were forced under the compulsion of severe penalties to comply with the orders of the Railroad Commission of said state and to install and apply the rates complained of; that said rates being thus compelled by the action of the Railroad Commission of Texas were not voluntary rates and could not therefore be held to be discriminative under the provisions of Section 3 of the Act to Regulate Commerce; that thereafter evidence having been duly adduced and full hearing and argument had thereon, the Interstate Commerce Commission on the 11th day of March, 1912, by order and opinion of date March 11, 1912, for which opinion see 23 I. C. C. R., p. 31, held, first, that the class rates from Shreveport to the several points in said opinion and order mentioned were unreasonable *per se*, and ordered respondents and appellants herein to reduce said class rates to the amounts indicated in said opinion. Second, that while the commodity rates complained of were not unreasonable *per se*, that they were unduly discriminative under the third Section of the Act to Regulate Commerce, in that the purely intrastate commodity rates from Dallas and Houston in the direction of Shreveport were upon the same commodities and for equal distances lower than the interstate rates from Shreveport in the direction of said two cities and appellants, The Texas & Pacific Railway Company, and the Houston, East & West Texas Railway Company, and Houston & Shreveport Rail-

road Company, were ordered to install commodity rates from Shreveport to the several points in Texas mentioned that were not in excess of the intrastate rates from Dallas and Houston in the direction of Shreveport for equal distances; that said opinion and order were rendered and made by a divided Commission, four members of said body being in favor thereof and three filing opinions dissenting therefrom; that said order by its terms became effective May 15, 1912; that thereafter and within the time allowed by law appellant, The Texas & Pacific Railway Company, filed its petition in the Commerce Court of the United States, seeking to cancel and annul said order and to permanently enjoin the enforcement thereof; that thereafter the Missouri, Kansas & Texas Railway Company of Texas, the St. Louis Southwestern Railway Company and the St. Louis Southwestern Railway Company of Texas, upon due order of Court permitting the same, intervened in said cause, alleging that while said order did not run against them, that by reason of competitive conditions it directly affected their rights and revenues, and thereafter the Railroad Commission of Louisiana and the Interstate Commerce Commission intervened in said cause seeking to support said order; that the Interstate Commerce Commission having held upon the facts that the class rates in its said order mentioned were unreasonable *per se*, petitioner and intervening petitioners, appellants herein, abandoned in said cause any attack upon that portion of said order applicable to said class rates presenting to the United States Commerce Court for determination the sole issue as to whether the Interstate Commerce Commission, having found that the commodity rates complained of were not unreasonable *per se* the purely

intrastate rates forced upon appellants herein by the orders of the Railroad Commission of Texas and not voluntarily installed by appellants, petitioners in said court were unduly and illegally discriminative under the third section of the Act to Regulate Commerce, and whether the Interstate Commerce Commission had authority or jurisdiction under the Act to Regulate Commerce to compel the removal of said discrimination; that the order of the Interstate Commerce Commission as to said class rates became effective May 15, 1912, but that portion of said order relative to the commodity rates and here involved was suspended from time to time until the rendition of the opinion of the United States Commerce Court herein, the last effective date of said order being May 15, 1913; that heretofore, to-wit, on the 29th day of April, 1913, the said United States Commerce Court made and entered its decree, after full hearing and argument thereon, dismissing the bill of petitioners and in all things sustaining the order of the Interstate Commerce Commission complained of, and petitioners in said court, appellants herein, having duly prayed for and obtained an appeal from said decree of the United States Commerce Court to this Honorable Court, and said appeal having been duly perfected, the record of said cause has been duly filed herein, said cause docketed and appearances entered, the same stands in this Court for final submission; that after the rendition of said decree of the United States Commerce Court herein, appealed from and prior to the effective date of that portion of the order of the Interstate Commerce Commission herein sought to be canceled and enjoined, the Interstate Commerce Commission, by order of date May 14, 1913, further suspended the effective date

thereof with the understanding and agreement upon the part of appellants that application to advance the hearing of this appeal should be made and final determination hereof had with such expedition as to this Honorable Court may seem proper.

3. Appellants aver that this cause involves the determination of issues of grave import. In this, that it involves the right of the duly constituted authorities of the sovereign State of Texas to make, install and compel obedience upon the part of carriers engaged both in state and interstate commerce to freight rates upon commodities moving between points wholly within the State of Texas and constituting purely intrastate commerce, and it involves the right of the Interstate Commerce Commission, assuming to act under the provisions of Section 3 of the Act to Regulate Commerce, to regulate purely intrastate rates made by a state rate-making body duly authorized thereunto by the Constitution and laws of the state and to compel carriers engaged in both state and interstate commerce to equalize reasonable interstate rates with rates purely intrastate not voluntarily installed by said carriers, but installed and enforced by the state rate-making authority, obedience to which is compelled by severe penalties accruing both to individuals and to the state in case of any departure upon the part of the carrier from said rates.

4. Appellants aver that the demand of the Railroad Commission of Louisiana, as stated by the majority opinion of the Interstate Commerce Commission, was that the Interstate Commerce Commission establish the same basis of rates of transportation between Shreveport and East Texas points as are accorded by Texas competitors of Shreveport interests in the same line

of business for the same distances, and that the majority of said Interstate Commerce Commission, by its order sustained by the decree of the United States Commerce Court herein appealed from, sustains the right of the Interstate Commerce Commission to measure a reasonable interstate rate by rates purely intrastate and distinctly and clearly sustains the power of said Interstate Commerce Commission to control and set aside rates purely intrastate made by the Railroad Commission of Texas, with full authority thereto under the Constitution and laws of said state, and orders appellants herein at the peril of the infliction of severe penalties accruing to both the State of Texas and to individual shippers to disregard the purely intrastate rates so made by the Railroad Commission of Texas and conform the same to rates ordered and approved by the Interstate Commerce Commission; that as shown by the dissenting opinions of Commissioners Harlan, Clements and McChord, said order of the Interstate Commerce Commission is in direct conflict with the prior orders and decisions of the Interstate Commerce Commission, and as will be shown upon hearing hereof by appellants is in conflict with the weight of judicial authority.

5. Appellants further aver that by reason of the great extent of the coast line of the State of Texas, its numerous ports of entry and its peculiar situation relative to interstate traffic a great portion of the rates made by the Railroad Commission of Texas have a direct and immediate effect upon interstate and foreign commerce; and that inasmuch as carriers engaged in both state and interstate commerce are not allowed under the laws of the State of Texas to depart in any particular from the intrastate rates made by said Railroad

Commission of Texas, it is a matter of grave and immediate importance that the relative authorities and jurisdictions of the Interstate Commerce Commission and the Railroad Commission of Texas involved in this cause be speedily determined.

6. Appellants further state that if in order to comply with the order of the Interstate Commerce Commission herein involved they should undertake to equalize their intrastate rates condemned by said order and thus depart from the scale of rates installed by the Railroad Commission of Texas they and each of them would be exposed to prosecutions at the hand of the State of Texas for severe penalties and by suits for severe penalties by each individual shipper, each shipment constituting under the laws of said state a separate offense.

7. Appellants further state that under Section 2 of the Act of Congress creating the Commerce Court, appeals of this character are entitled to "priority in hearing and determination over all other causes except criminal causes" in this court.

Wherefore, appellants pray that this cause be ad-

vanced and set down for hearing at such early day as may to this Honorable Court seem proper.

THE TEXAS & PACIFIC RAILWAY COMPANY.
By HENRY G. HERBEL and
FRED G. WRIGHT,
Its Solicitors.
MISSOURI, KANSAS & TEXAS RAILWAY COMPANY OF TEXAS,
By JOSEPH M. BRYSON and
ALEX S. COKE,
Its Solicitors.
ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, and
ST. LOUIS SOUTHWESTERN RAILWAY COMPANY OF TEXAS,
By S. H. WEST and
EDW A. HAID,
Their Solicitors.